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Ideas on Liberty

AUGUST 1975

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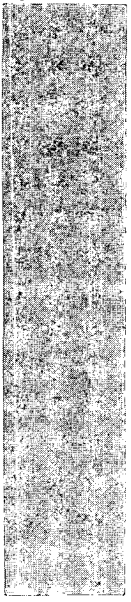

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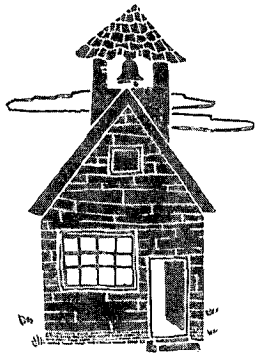

Educational Freedom

SCOTT W. BIXLER

THOSE WHO CHAMPION the case for freedom are often confronted with criticisms of the ethics of the free market system – charges such as "free enterprise encourages selfish materialism," and "the average consumer doesn't know what is good for him," or even "the free market ignores the poor." The economist must often step outside the boundaries of pure economic theory in an attempt to show that the free market does not lead to these consequences.

One accusation frequently heard is that the free market inadequately provides certain important services. The reasoning usually is as follows:

1) The free market leads to consequence A,
2) This consequence is undesirable,
3) Therefore, the free market should not be permitted.

As with any syllogism, a valid refutation must simply prove conclusively that the major premise is false. Economists have for many years been doing exactly that in their analyses of criticisms of the free market. For example, it was often contended that the free market caused business cycles and unemployment. This charge was thoroughly refuted by Ludwig von Mises who demonstrated that business cycles are caused by government intervention in the area of bank credit expansion. He explained that unemployment is caused by union or government action to keep wage rates above the free market level. He also showed that only coercive intervention, not private spending, can bring about inflation.

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The science of economics provides no ultimate ethical judgments. It can only provide the data necessary in order to make such judgments. Pure economic theory involves the relationship between ends and means: how man uses scarce resources for satisfying his most urgent needs. It provides man with certain laws which are true regardless of whether man's ends are altruistic, egoistic, vulgar, or refined. Today, however, with the preponderance of "welfare economics" and the corresponding interventions in the economy, the economist must not only explain the workings of the market, so that people may indeed frame their value judgments, but must also comment on the consequences of various political policies.

Therefore, when those who make government policy maintain that a certain coercive intervention will bring about a corresponding result, it is up to the economist to explain the consequences of that policy. By doing this he cannot advise as to the best possible route to pursue to achieve certain ends without committing himself to those ends. Thus an economist who is hired by a businessman commits himself to the ethical valuation that increasing the businessman's profits is good. Similarly, an economist hired by the government to advise bureaucrats on the most efficient means of "stimulating the economy" is committing himself to the value judgment that intervention is desirable. Mises reflects on the relationship of the economist and government:

> . . . economics as such is a challenge to the conceit of those in power. An economist can never be a favorite of autocrats and demagogues. With them he is always the mischief-maker, and the more they are inwardly convinced that his objections are well founded, the more they hate him.[1]

We need not attempt here to determine whether the motives of those who make political policies are good or evil. Let us assume that their motives are good; that they are truly concerned with the well-being of each individual. On that basis, let us try to demonstrate how the policies conducted in one area, that of education, cannot possibly bring about the ends sought by those in power. It will be assumed that those who favor the present state-run compulsory system honestly believe that this is the best possible system for education. We cannot assume evil intent, but must rather hope that through logical reasoning it can be shown that the present system is indeed unworkable,

[1] Ludwig von Mises, *Human Action* (Chicago: Henry Regnery, 1949), p. 67.

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immoral, and thus totally inconsistent with a truly free society.

Self-responsibility the Key

Let us first look at one major argument that not only is used as a defense for compulsory education, but is also applied to many other areas of government intervention. This is the charge that individuals do not always know their own self-interests best; and since this is supposedly the foundation upon which the case for laissez-faire rests, the state must intervene and any argument for the free market is invalidated. But the argument for the free market rests on a much more complex doctrine.

While it is impossible to elucidate here all the many arguments for freedom, what can be asserted is that everyone should have the right to be free to pursue his own interests as he deems best. It is folly to contend that consumers are never mistaken as to their best interests. But on the free market they are able to hire and consult with experts to give them advice. Those experts (doctors and lawyers, for example) whose advice proves most successful will reap the rewards, while poor ones will fail.

The government expert, on the other hand, acquires his fees through compulsion. There is no market test of his success in advising people of their own best interests, but only the test of his ability to curry political favor. Also, the government expert has no incentive to really care about his "clients," as he is paid regardless, whereas the private expert has every conceivable incentive to look out for his client's interests.

This leads us to the one fatal contradiction into which all proponents of government intervention are trapped: they assume that individuals do not know how to run their own affairs, or to hire experts to advise them, but yet are competent enough to elect officials who do know what is best for them. Presumably, all voters are eminently qualified to elect their rulers!

Perhaps the most trenchant argument used by those favoring public education is the belief that "everyone has a right to an education." A close examination of this doctrine exposes its totalitarian implications. This "right" to an education entails the forced redistribution of income from some members of society to others: the robbing of Peter to pay Paul. Goods and services are not free. To say that one has a right to an education is to believe that some individuals are entitled to at least a portion, if not all, of the fruits of another man's labor. It

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requires the existence of a group of exploited people who are to be coerced into providing the enumerated "right."

Taking this argument to its logical conclusion provides a powerful indictment against public education. Since a person's education is not strictly limited to his formal schooling, if one has a right to an education then logically he should have a right to virtually all educational media, including newspapers and magazines. An individual's education is an ongoing process that continues throughout most, if not all, of his lifetime.

There is little doubt that most people would react with horror if the government were to set up a national newspaper chain and compel all people to read them. In addition, what would be the reaction if the government outlawed all other newspapers, or else gave authority only to those that adhered to certain standards set by a government commission? Clearly this would be a gross violation of the freedoms of speech and press. Nevertheless, this is exactly what has been established in the area of education. It is evident that scholastic freedom is not regarded as important as freedom of the press. But are such value judgments reasonable on the part of policy makers? Surely one could make a case for educational freedom being the more important, as it is in this area that the uninformed minds of children are involved.

A similar refutation of the argument for redistribution of income for compulsory education is provided by E. G. West, who draws an analogy between education and food:

> Protection of a child against starvation or malnutrition is presumably just as important as protection against ignorance. It is difficult to envisage, however, that any government, in its anxiety to see that children have minimum standards of food and clothing, would pass laws for compulsory and universal eating, or that it should entertain measures which lead to increased taxes or rates in order to provide children's food, "free" at local authority kitchens or shops. It is still more difficult to imagine that most people would unquestionably accept this system, especially where it had developed to the stage that "for administrative reasons" parents were allocated those shops which happened to be nearest their homes.[2]

In addition, if one believes that it is right to take a certain percentage of the fruits of a man's labor through property taxes, why not take all of it for use in education? Undoubtedly there would be

[2] E. G. West, *Education and the State* (London, 1965), pp. 13-14.

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great achievements in education if this were done: modern schools, highly paid teachers and administrators, and thus "better educated" students. Similarly, why force an individual to attend school for only eleven years? Wouldn't it be far better if the government would force all persons to go to school all of their lives? Americans would truly be the most educated people in the world!

The Parent or the State?

Unquestionably the central issue is quite simply whether the parent or the state should exercise ultimate control and responsibility for the upbringing of the child. There is no middle ground on this question, as no third party has ever been proposed or found with the authority to seize and rear the child. I would contend that the parents are the natural overseers of the child. They are the literal producers of the child and are thus bound to him with ties of love as well as responsibility. Who else but the parents know best the individual interests and needs of their children?

The alternative to parental responsibility is state control. What are the results of this alternative? Again it is helpful to analyze the nature of private versus government management of certain undertakings. As we have pointed out, it is inherent in the nature of a bureaucracy to be inefficient and unresponsive to consumer demand. Government must seek to impose a uniform set of rules throughout its jurisdiction. If it did not, surely the people would charge discrimination and special privilege. All taxpayers must be treated alike. Such is the predicament of the public school bureaucrat. In deciding the exact pattern of formal schooling in his area, he must choose between different, and often controversial, alternatives. Should the schools stress liberal arts or vocational training? socialism or free enterprise? religion or secularism? Should they be integrated or segregated? Certainly there will always be at least some parents and students who will not receive the type of education they desire. Hence, the inevitable conflict which is inherent in any system based on force. The more that government decisions replace private decision-making, the more the various groups of parents will be at each other's throats in order to supplant standards with their ideas of proper methods.

We see this conflict today, not only over questions of what is to be taught, but also over the issue of forced busing of students. Here is abundant evidence of government attempts to bring about uniformity and equality in the educa-

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tional system. Protests and demonstrations over the busing question are commonplace. One wonders, however, if these same parents see the glaring inconsistency of their position. A substantial majority oppose busing, but forget that they also vote to force others to pay for their children's education and to force all children to go to the schools. In this light the questions of forced busing, or the use of questionable textbooks, seem relatively minor. How can they conceivably favor the potential use of physical force against students who do not wish to attend school, while at the same time believing it is wrong to bus students for the purpose of achieving a racial balance? This is undoubtedly a double standard of the most flagrant order.

Can we be surprised that government education leads to conflicts and violence in society? After all, since the schools are "public property" aren't the people who have paid taxes the real owners? Shouldn't they then be allowed to exercise their right of control over the running of the schools? Indeed, a defender of the concept of public property is hard-pressed to justify bureaucratic control over property for which the taxpayers have been forced to pay.

In reality, the idea of public property or common ownership is erroneous. It implies that every citizen owns an equal share of property which is publicly owned. But no individual owns any part of public property. If one doubts this fact then let him attempt to claim his share and try to sell it, and then have this upheld in any court. As F. A. Harper points out:

> The corollary of the right of ownership is the right of disownership. So if I cannot sell a thing, it is evident that I do not really own it.[3]

Thus all public property is simply the property of the rulers in power in the government at any one time. They alone have control over it and are the real owners of it.

How can we expect the public schools to teach the virtues of private property? Their very existence is based on aggression. The child is indoctrinated from an early age with the philosophy of collectivism, or the virtue of "majority rule." Individuality is supressed in favor of equality. In the words of Murray Rothbard:

> By imposing uniformity on the teaching of its charges, no matter

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[3] F. A. Harper, *Liberty, a Path to Its Recovery* (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1949), p. 106.

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how pure its intentions, the state begins the process of supplanting individual will with the will of the group, the collective conscience, the majority force. The majority, of course, is represented institutionally by the state and its leaders. Through this process the doctrine of obedience to the state comes to be stressed above all else. Tyranny is not the natural state for the free spirit of man. Tyranny must be learned, while diversity, spontaneity, and independence must be eradicated.[4]

Mrs. Isabel Paterson also comments on the tyranny of compulsory state education:

> . . . every politically controlled educational system will inculcate the doctrine of state supremacy sooner or later, whether as the divine right of kings or the "will of the people" in "democracy." Once that doctrine has been accepted, it becomes an almost super-human task to break the stranglehold of the political power over the life of the citizen. It has had his body, property, and mind in its clutches from infancy. An octopus would sooner release its prey . . . A tax-supported, compulsory educational system is the complete model of the totalitarian state.[5]

Still another powerful argument against compulsory education deals with the parent's control over the child's associates. Those who can't afford to send their children to private schools or hire a tutor, must send their children to a public school. It is in the public school where most of the children are found who would not be there if it were not for the compulsory attendance law. Included are uneducable children, juvenile deliquents, and the like. Thus the state forces the parents to have their children associate with these types, regardless of the wishes of the parents or the children. In addition, those children who are unsuitable for, or uninterested in, the type of schooling presently available, and who would be much better off at home or working, are forced into school, making it worse both for them and the other students.

Incredible though it may seem, some people actually think that this is the outstanding virtue of public education. Exposure of all children to "all types of humanity" and the forcing of all children to learn about "life" is heralded as the great egalitarian goal of "progressive" educators and intellectuals. When confronted with this type of thinking it is indeed difficult not to deviate from the assumption that those making policy decisions are truly concerned about

[4] Murray N. Rothbard, *Education, Free and Compulsory* (Wichita, Kansas: Center for Independent Education, 1972), p. 11.

[5] Isabel Paterson, *The God of the Machine* (New York, 1943), p. 257.

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the welfare of the individual. This is especially true when one examines the writings of people such as Calvin Stowe, a mid-nineteenth century "educational reformer" who compared compulsory education to military duty:

> If a regard to the public safety makes it right for a government to compel the citizens to do military duty when the country is invaded, the same reason authorizes the government to compel them to provide for the education of their children — for no foes are so much to be dreaded as ignorance and vice. A man has no more right to endanger the state by throwing upon it a family of ignorant and vicious children than he has to give admission to the spies of an invading army. If he is unable to educate his children the state should assist him — if unwilling, it should compel him. General education is a much more certain, and much less expensive, means of defense, than military array . . . as education . . . is provided by the parents, and paid for by those who do not profit by its results, it is a duty.[6]

As stated previously, the attempt here is to prove, through reason alone, that public education is wrong in principle and thus inconsistent with individual freedom. While forced to admit that state education is a major step toward tyranny, we must not divert from the central thesis of beneficial intent on the part of policy makers. For the moment we must hope that a clear and logical delineation of the arguments both for and against state control of education will provide a clear picture that allows the individual to make a rational choice. We must be optimistic that most people will turn away from the current ideology and be able to foresee the inevitable result before it is too late.

Sadly, however, most people do not even stop to think that there is an alternative to the present compulsory system. They believe that without a "free" education system based on coercion, the result would be some kind of new Dark Age, with the nation sinking into ignorance, crime, and violence. The assumption is that many people would not continue to desire an education. This ties in with the aforementioned argument of knowledge of self-interest. It is not logical to assume that the educational system, if left to the free market, would degenerate or be of inferior quality. To hold this belief is to also hold that without public garbage disposal, most people would leave their garbage lying around in the streets!

[6] Calvin E. Stowe, *The Prussian System of Public Instruction and its Applicability to the United States* (Cincinnati, 1830).

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What kind of educational environment would exist if tax dollars were not used to support schools and if students were not forced to attend? In considering this question it is interesting to note what relative freedom has done to provide Americans with the highest standards of living in the world. Today Americans choose from an assortment of automobiles, food, entertainment, and so forth that people one hundred years ago would have thought impossible. Television, cars, and modern communication networks came into existence, not because of, but in spite of government intervention in the market. It would be illogical to believe that freedom in education would have produced anything in any way similar to today's poorly-run state monopoly system.

Letting the market function unhampered in education would most likely produce an explosive and enthusiastic growth in the number of private voluntary schools. Parents would be free to send their children to trade schools, right-wing schools, left-wing schools, church controlled schools, "progressive" schools, or whatever type for which there was a sufficient demand. Those which satisfied their customers would flourish. Those which did not would have to close.

We have analyzed most of the major criticisms of a voluntary educational system as well as the various arguments for a continuation of the present system. We have tried to show that the current public education system is inconsistent with a free society; that instead of hastening educational progress, it has actually led to stagnation and conflict. Implicit in this analysis has been the most important question of all. This is: which system provides the most efficient means of satisfying human wants – the free market, or statism?

Coercion or Voluntary Exchange?

There are two ways for man to satisfy his needs: through the use of coercion (the threat of violence or force), or through freedom (the process of voluntary exchange). The science of economics provides man with the knowledge necessary to make the choice between these two alternatives. It tells us that the free market maximizes efficiency and productivity. There is mutual benefit. Every man gains because his gain is precisely the consequence of his bringing about the gain of others. Everyone earns according to his ability to satisfy consumer desires. There are incentives for production and a general rise in the standards of living.

Under statism, the individual

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earns in proportion to the amount he can plunder from the producers of goods and services. There is the ultimate destruction of incentives and the lowering of living standards. One gains only at the expense of others.

No attempt to disregard the inexorable laws of economics in any way invalidates them. This is why Mises is correct when he states that the economist will always be the "mischief maker" with demagogues, for they are always reluctant to admit that they are subject to economic laws.

What answer shall we give to this ultimate question of freedom or statism? Mises leaves us with a sobering thought as to our decision:

> The body of economic knowledge is an essential element in the structure of human civilization; it is the foundation upon which modern industrialism and all the moral, intellectual, technological, and therapeutical achievements of the last centuries have been built. It rests with men whether they will make the proper use of the rich treasure with which this knowledge provides them or whether they will leave it unused. But if they fail to take the best advantage of it and disregard its teachings and warnings, they will not annul economics; they will stamp out society and the human race.[7]

In the final analysis then, we must make our choice between freedom and tyranny. We must choose between harmony, prosperity and order on the one hand, and conflict, poverty and chaos on the other. For this writer, the choice is clear.

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[7] Mises, *op. cit.*, p. 885.

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By Better Example

THOSE WHO EFFECT GREAT REVOLUTIONS are always small in number. Such people need not wait to become a majority. No one else *can* do the job except those who understand what needs to be done. The disruptive influence of political centralization in education will continue until it has been overshadowed and rendered meaningless by a moral force of sufficient intensity, a force generated by individuals who understand what is at stake and who serve notice by their own example that a better way exists to educate our young.

GEORGE C. ROCHE III, *Education in America*

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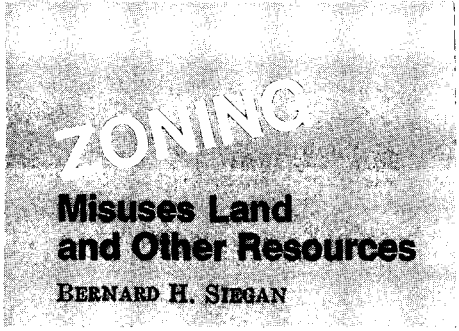

Misuses Land and Other Resources

BERNARD H. SIEGAN

NO ONE I KNOW would consult a tailor about personal surgery or a surgeon about suit tailoring, an architect about drafting a will or a lawyer about preparing house plans. In this age of specialization, few would choose to be operated on by a general practitioner rather than a surgeon. People tend to hire lawyers who specialize on the matters on which they need advice.

The modern world demands a high degree of expertise. Why then are we so willing to allow eminently unqualified people to have a voice in the development of land? The experts and authorities in this field are the builders and developers. While there are limits to their knowledge, they surely are far more expert at their business than those engaged in other pursuits. Yet more and more, paradoxically, zoning requires builders to submit their proposals, for final decision, to the public and its representatives.

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Mr. Siegan is the author of *Land Use Without Zoning* and many articles on the subject. He practiced law for 20 years in Chicago before moving in 1973 to La Jolla, California where he is professor of law at the University of San Diego Law School.

Consider a situation that recently occurred in San Diego. One of the country's leading shopping center developers sought since 1973 to build a major shopping and housing complex in a northern portion of the city. After substantial changes were made, the concept of the center was finally approved in early May by the City Council.

This approval, however, was subject to the requirement that the city's planning commission, composed of private citizens appointed by the Mayor and council, make the final decision on the actual design and placement of buildings and other facets of the plan. The planning commission's deliberations are open to the public, and residents of the city were assured that they would have a strong role in the planning of the center.

The idea is preposterous! If people have reservations about placing their cares and concerns in the hands of general practitioners instead of specialists, they should be outraged at the prospect of entrusting it to those who have virtually no understanding at all.

Some individuals in every community of course, do have specialized knowledge in architecture and design, but experience discloses that such persons stay away from zoning hearings. Or if they do participate, it will be to look after their own personal interests. Un-

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fortunately, it will be those with an axe to grind, local busybodies and professional joiners who have the most time for involvement.

I have attended zoning hearings where homeowners, whose combined knowledge of development would easily fit on the head of a pin, condemned complex plans prepared by highly skilled specialists. Worst of all, the local authorities will probably weigh heavily such comments because they emanate from sources with powerful weapons: the opportunity to vote them out of office. It is likewise absurd to give an important role to those who have no stake in the success of a venture and possibly may even prefer its demise.

Almost invariably, it seems, city planners and councilmen try to upgrade proposed developments. One gets the impression that residents want only Taj Mahals to be built in "their" municipalities. Developers will seek to pass on the cost of upgrading by raising prices or rents. If market conditions do not allow for increases, the projects become economically unfeasible and will not be erected. Production will thereby be reduced, and this will also cause prices or rents to rise.

Another possibility is that the developer will compensate for the added expense by reducing the quantity or quality of other amenities. He may attempt to offset the cost of required park dedications, special architectural treatment or lower density by say, lessening the amount of insulation and soundproofing or the quality of the windows, doors, plumbing, heating, fixtures, and the like.

The developer may still proceed despite the fact that his horse has been turned into a camel and the market may not be as favorable for camels. At least one reason for making such a decision is to save the huge expenditures which probably were made in rezoning the property. These expenses as well as those incurred in holding or optioning the land would be lost if the project is abandoned.

The foregoing describes zoning in action and suggests the difference between the private and public planning process. The owners of any business have to conduct it with maximum efficiency; otherwise their profits will diminish or disappear. They must purchase and produce with minimal waste. And above all, they must create something consumers will buy at a price which includes a profit.

No such limitations confine the public regulators. They make decisions for a large variety of reasons; and efficiency is rarely a primary one, for there is little they can gain from encouraging it. As a result, zoning causes the waste of much land and resources.

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Individuality and Intellectual Independence

ANNE WORTHAM

INDIVIDUALISM, the doctrine of social freedom and independence, is being cast aside today as an ideal of Lockean fools; and individuality – the consequence of self-determination, self-reliance and self-assertiveness – is resented as a mysterious, unmalleable quality to be denied public acknowledgment in the affairs of men and undermined at every opportunity. While social engineers, economic planners and professional reformers continually advocate a social system in which individuals are coerced into equal conditions of life, animal behaviorists tell us that man is not as unique among animals as he likes to think. According to both lines of reasoning, a man is little more than a sophisticated primate who in time can be trained to accept a form of socio-political collectivism that prevents him from achieving any more or less than the man next to him.

They tell us that man's similarities to other animals in the realm of perceptual awareness are more important than his distinction from them as a being of conceptual awareness; that his similarities to other men as *Homo sapiens* outweigh his differences from them as an individual. Indeed, behaviorist B. F. Skinner tells us that in order to prevent the abolition of the human species, science must abolish autonomous man (i.e., the individual) – "the man defended by the literatures of freedom and dignity." "His abolition has long been overdue," writes Skinner. "To man *qua* man we

Anne Wortham is a Research Librarian in the news syndication industry. One of her earlier articles from THE FREEMAN is included in *The Libertarian Alternative: Essays In Social and Political Philosophy*. This article is excerpted from her forthcoming book profiling race conscious prototypes among American Negroes.

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readily say good riddance. Only by dispossessing him can we turn to the real causes of human behavior."[1]

Intellectual Independence and Free Will

If they could the abolitionists of individual autonomy would eradicate the intellectual boundaries that distinguish the identity of one man from another. They persist in judging men according to the similarities found in such statistical and categorical classifications as their biological ancestry, their national ancentry, their income level, their sexual attributes or the environment in which they live. While these classifications of attributes are useful in describing groups of individuals, they are not sufficient to distinguish one individual from all others, including those with whom he shares certain characteristics and circumstances. The fundamental characteristic that all men share is their possession of a conceptual faculty. And it is within the realm of man's identity as a reasoning being that the primary distinction among individuals must be made. That distinction is man's *use* of his consciousness. All other variations, such as his values, motivations and attitudes, and their consequences flow from this primary condition.

The ruling force of man's use of his consciousness is his power of volition, what Nathaniel Branden defines as "the power to regulate the action of his own consciousness."[2] It is the power to focus one's mind to achieve a level of awareness – to initiate thinking and to be aware of the nature and consequences of his thinking. Entailed in this self-regulatory mental activity and fundamental to man's intellectual independence is his free will. Free will is defined by Branden as follows:

> "Free will" – in the widest meaning of the term – is the doctrine that man is capable of performing actions which are not determined by forces outside his control; that man is capable of making choices which are not necessitated by antecedent factors. . . . Man's free will consists of a single action, a single basic choice: to think or not to think. It is a freedom entailed by his unique power of self-consciousness. This basic choice – given the context of his knowledge and of the existential possibilities confronting him – controls all of man's choices, and directs the choice of his actions.[3]

The doctrine of free will refutes

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1 Skinner, B .F., *Beyond Freedom and Dignity*, (New York: Alfred A. Knopf, Inc., 1971), pp. 200-201.

2 Branden, Nathaniel, *The Psychology of Self-Esteem*, (Los Angeles: Nash Publishing Corporation, 1969), p. 37.

3 *Ibid.*, p. 50.

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the deterministic claim that man has no control over his conscious growth and development; that he is no more than a mass of protoplasm molded by his genes and social environment whose fate is determined by the stars or a witch's spell. The use of reasoning is not something *done* to man; he *makes* reasoning occur. Even when men behave *as if* they could not help what they do, given the possession of normal faculties, they must be held accountable for their thought and actions. They *must* choose – whether out of ignorance, or in order to evade and repress, or whether to achieve truth and freedom of the spirit. Whatever the reasons for their choice, whether for good or evil intentions, men must choose to act; and the choice to act presupposes the choice to think – *to initiate reasoning.*

Putting Reason to Work

All men are equally equipped with the capacity to reason – man's basic tool of survival. But it is in his choice to apply (or not to apply) his reason to the problem of survival, from the first hour of birth until the last breath of life, that each man stands *un*equal to other men. In the broadest sense, the conditions of human survival are equally the same for all healthy men at the onset of their lives. But it is each man's *perception* of those conditions and the manner in which he translates those perceptions into integrated knowledge that makes one man unequal to other men. The decision to be conscious – to focus one's awareness – and to perform the process of thought necessary to live in his evironment is original with each man and must be initiated (or suspended) by him. Regardless of where he lives or under what circumstances, he has the option to act in support of his existence – or he can act against it, blanking out thought, evading effort and thereby sabotaging his life.

An individual has no choice about the color of his eyes, but he can choose to color his personality by a view of a gray, fogbound universe in which he feels hopelessly lost and powerless to comprehend; or he can color his personality by a view of a sunswept, integrated universe in which he feels at ease and confident in his ability to master. An individual has no choice about his need for oxygen, but he can choose to pollute his mind with the smog of doubts, fears and rationalizations; or, he can choose to keep his mind filtered with continuous inquiry, knowledge and validation. An individual has no choice about the physical height of his body, but he can

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choose to reach the intellectual height of a virtuous man of courage; or he can sink to the depths of a cowardly guttersnipe.

Free Will Makes the Difference

It is man's free will that individuates him. Free will gives him an autonomy that is inviolate, pulling him out from the family of man, separating him from his neighbors, friends, loved ones and associates. In this sense, each man is *cognitively* alone – not linked to any other men before, during or after him; not linked to any living entity or social institution, conventions, mores or traditions. Even if all men had the same quantity and quality of genetic endowment, the conscious choice of each individual to activate his mind would remain the controlling force of all other life choices. And the character and personality that results would still make the person distinct from all other men.

As an end in himself, man has sole control over his mind; neither his physical nor social environment can compel him to think (or not to think), to act (or not to act). Even when a man chooses to follow the crowd, the choice is his – born in *his* mind, not in the "collective mind" of the crowd. He may live in an environment where the will of the tribe is law, but there is nothing to prevent him from possessing a sovereign consciousness except his own will. He may live in a society where to exercise his mind is punishable by the pain of death, but there is nothing short of death that can prevent him from using his mind except his own will. His body may be destroyed by others, but only he has the power to destroy his mind.

Like all living things, man is a part of nature but he is the only living organism that is in any degree free of the forces of nature – i.e., not controlled by his external environment. Unlike other organisms, the greater freedom man has of nature, the greater are his chances of survival. "An animal obeys nature blindly," writes Branden, "man obeys her *intelligently* – and thereby acquires the power to command her."[4]

Unlike the lilies of the field that neither toil nor spin, man *cannot* survive in his environment merely as a passive reactor. The facts of reality exist for all to comprehend. It rains on the irrational as well as the rational but what a man makes of the rain is entirely his own affair. A simple but profound difference between the lilies of the field and man is that while the survival of the lilies is dependent on their strength to withstand the

[4] Branden, Nathaniel, *The Disowned Self*, (Los Angeles: Nash Publishing Corporation, 1971), p. 239.

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rain they cannot escape, man builds a shelter. And the difference between individuals is that while one man will build a shelter of straw, another will build his shelter of stone.

All lilies everywhere react biochemically to their environment in much the same way. But each man, at any time and under any circumstances, must face the facts of his environment alone – not with the purpose of being a chemical reactor but with the purpose of identifying the facts and using that knowledge to further his life. There are no exceptions. The rules are the same for each man whether he inhabits a mud hut in the most primitive jungle or a marble mansion in the most technologically advanced society. A Twentieth Century housewife's responsibility to activate her consciousness is no less than Aristotle's was. And all her claims to an intellectual heritage based on the thinking of Aristotle will not make her any less responsible for the original thinking she does or does not do. What links the housewife and Aristotle, or the caveman and the astronaut is that regardless of their knowledge, context and values, each must function in the manner of *Homo sapiens*: each must choose to focus his awareness or not to focus it.

It is not enough to choose to think; one must then proceed to think – to understand the identity and cause of things. "Theirs [is] not to reason why," wrote Alfred Tennyson of the Light Brigade, "theirs [is] but to do and die." But if man is to exist in harmony with reality, he *must* ask why (as well as what and how) and he must live to *live*, not to die.

Intellectual Independence and Understanding

If a man is to control his environment rather than rely on the thinking of those who do control their environment, he must be willing to understand that environment. Guesswork, hunches, or faith won't do. He must be willing to distinguish between who and what in his environment is beneficial to his existence and who and what is inimical to it. But understanding is not a quality man is born with. It does not come to him overnight (even a sudden "brainstorm" has a cognitive history in an individual's mind) and it cannot be merely wished into existence. It is an intellectual level of awareness one must work for – the end product of a logical process of independent thought.

The principle of understanding occupies both ends of the knowledge-acquiring spectrum; it is an on-going process that is both the cause and effect of man's reason-

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ing. A man activates his reasoning because he wants to understand himself and reality; and as the result of his logical reasoning, he achieves understanding. Mere repetition or imitation does not constitute learned knowledge, as it does not require understanding. But learning requires thinking and thinking requires the will to understand. While it is possible for one man to learn from another, it is not possible for one man to do another's thinking. What he learns must be *his* knowledge, or he cannot claim to have learned. This is not to say that a person's ideas must necessarily be original with himself. He may hold the same ideas as other men, but what must be original with him is the thinking and the manner of thinking he does to reach the same conclusions as other men. However, the goal of his thinking should not be to reach the conclusions that others have reached but to arrive at convictions that are legitimately his own – whether they stand in agreement or disagreement with those of others.

Entailed in the will to understand is the commitment to creativity and honesty. One must not only be certain about *what* he knows but also the extent and limitation of his knowledge. He must be the prime architect, organizer and administrator of the content of his consciousness. He must be at once selective about the facts he integrates and scrupulous about the relevance they hold for his life. It is in this manner that understanding is necessarily contextual. It is by this monitoring of his thinking that an individual maintains cognitive harmony with the facts of reality and it is in this manner that he remains honest.

Achievement through Experience

Contextual and honest understanding forbids claiming more understanding than one's actual thinking and experience can provide. A person's knowledge and the understanding it entails is his own when he has reached the point of *experiential* affirmation of his convictions – when he can relate the abstractions of his mind to the concretes of his existence. But it takes time for intellectual understanding to be transformed into an experiential achievement. A child does not understand facts about himself or his existential environment that a mature adult is required to understand. The intellectual growth span of a person is in many ways analogous to the cultural growth span of the human race. His movement from the level of mere perception to the higher level of conceptualization and finally to psycho-intellectual maturity is as impressive as the dynam-

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ics of mankind's progression from the Stone Age across the centuries to the Space Age. Each individual begins life at the level of an intellectual Stone Age. But whether he reaches his own personal Space Age and beyond depends on whether he chooses to think and how skilled he becomes in the exercise of his reason toward that goal – not on his genetic endowment, his socio-economic status or how well he can mimic the reasoning of others.

The Possibility of Error

There are aspects of reality which one may not be able to understand until the context of his life is broad enough to provide room for that knowledge which he does not yet possess. Yet it is also possible to have an abstract understanding of certain facts and never have an experience in one's life that reflects that understanding. One does not have to be a candlestick maker to understand how candles are produced. For the same reason, one is not prohibited from inventing a better source of light than candles simply because it has not been done before. This creativity, or what Branden calls "cognitive self-assertiveness," is the factor of man's consciousness that underlies his esthetic expression: he is able to create a fictional hero unlike any person he has met – or paint a landscape he has never seen – or devise a theory for a social system that has never existed.

Since man is not infallible–since knowledge and the understanding it entails is not automatic in human beings – since man must *discover* what is beneficial and what is inimical to his existence – there is always the possibility that he may commit errors of knowledge and judgment. The will to understand requires that he be willing to admit those errors and to correct them. It requires that he operate on the premise of intellectual honesty, confidence and courage. Rather than a source of humiliation, an error should be seen as a green light signaling the necessity for new thought that can lead to another level of understanding, increased knowledge and intellectual growth. It presents one with the opportunity to expand his ability to deal with the world around him; to increase his efficacy as a person. *Man cannot be right all the time,* and he cannot be certain about everything all the time. One's past assumptions may be proven in error by his future knowledge; and by the same principle, his answers to today's questions may become his validated convictions of tomorrow. What is important is that he does not attempt to fake his own nature or the nature of reality by

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evading his errors or refusing to acknowledge and resolve his uncertainties.

Steps in the Growth Process

But there are those who would rather die than admit their errors. Equating right with *good* and wrong with *bad,* they feel that to admit they have erred means to admit that they are bad people. To be judged in error is to them the same as having their morality called into question. Hence, they build up all manner of defenses and rationalizations to protect the image of perfection and omniscience they would like to project. But in choosing such deception, they commit an even greater error — not one of knowledge, but a breach of morality: they wish to fake reality.

But the man committed to understanding does not experience such fears or contradictions. He knows that to be wrong does not mean that he is morally bad; he knows further that being right does not make one necessarily morally good. He knows that one is morally bad only when he tries to make a mistake appear to be correct when it isn't; he is then bad because he is a liar. He knows that mistakes are tools; they are warning signals that more knowledge is required of him. He does not feel that because he has made mistakes, he cannot be certain of anything. And he never uses the phrase "to err is human" as an excuse *not to* correct his mistakes. To be human is to grow; human error, properly seen, is a force of motivation — not an excuse to do nothing.

The man who chooses to think and does so with the will to understand is a person of sovereign consciousness, a *self*-regulating consciousness. To be such an individual means accepting the responsibility for being cognitively independent of other men; it means being responsible for one's own thinking — being the initiator of the thought and action necessary for one's existence. Because he is a self-regulator, the sovereign individual does not depend on the judgment of others to motivate his self-understanding. He is intellectually adventurous and secure in his convictions, but always on the alert to improve and expand his store of knowledge and correct his errors. Not only does he seek knowledge to benefit his existence; he *enjoys* the search. Repeatedly, he enthusiastically initiates the process of identifying aspects of reality, of integrating those facts into concepts and those concepts into wider abstractions and principles to add to his continual accumulation of knowledge.

Yet he knows that disaster can result from resting on the laurels

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of mere intellectual understanding; that the test of one's understanding lies in the application of it to his thought and action. He knows that the constancy of cognitive and existential independence is not automatic but must be continually asserted; that one is not born intellectually and existentially sovereign but must discover the means of *becoming* so; and that there is no guarantee that he will remain so at any given time or under any given set of circumstances. For this reason he guards his consciousness against irrationality as rigorously as armed troops guard the territorial sovereignty of a nation. His sovereign consciousness is his most prized possession, his greatest achievement, and the means by which he remains the unique entity that he is.

But there are many men who *do not want* to be unique and original, who *do not want* to assume the responsibility of their intellectual independence of other men. And when they declare that all men are equal and should be forced to exist as such, it is not the dignity of man that is their goal as they claim. Rather, it is either in forced equality that such men hope to escape what is to them the horror of man's solitary, independent means of existence – or, it is in forced separation that they attempt to escape having to deal with the autonomous consciousness of other men.

But the intellectual independence of man's existence is a fact of reality that cannot be escaped and all the rhetoric to the contrary will not make it any less an issue of his survival that each man must contend with. For if men are to be *human*, if individuals are to be *persons*, it is the principle of intellectual independence that they must hold as their priority.

IDEAS ON LIBERTY

Equality and Justice

IN THE FULL ENJOYMENT of the gifts of Heaven and the fruits of superior industry, economy, and virtue, every man is equally entitled to protection by law; but when the laws undertake to add to these natural and just advantages artificial disfunctions, to grant titles, gratuities, and exclusive privileges, to make the rich richer and the potent more powerful, the humble members of society – the farmers, mechanics, and laborers – who have neither the time nor the means of securing like favors to themselves, have a right to complain of the injustice of their Government.

ANDREW JACKSON, *from a Veto Message of July 10, 1832*

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The Law

V. Orval Watts

The end of the law is not to abolish or restrain, but to preserve and enlarge freedom. For in all the states of created beings capable of laws, where there is no law there is no freedom. For liberty is to be free from restraint and violence from others; which cannot be where there is no law; and is not, as we are told, a liberty for every man to do what he lists (for who could be free when every man's humour might domineer over him?), but a liberty to dispose, and order as he lists, his person, actions, possessions, and his whole property, within the allowance of those laws under which he is, and therein not to be the subject of the arbitrary will of another, but freely follow his own.

John Locke, *Second Treatise on Government*

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THE RECENT RISE of militant nihilism[1] in the United States is reminding liberty lovers that there can be no liberty without law. Not only is there no freedom without restraint, but we gain freedom only as we discover and obey "The Law."

Unfortunately, however, "Law" has come to mean, more and more, the decrees and dictates of the State, or Government: traffic laws, tax laws, labor laws, civil rights laws, antitrust laws, school laws, and the orders of thousands of agencies employed to interpret and enforce these measures.

The "Law" may also mean the Enforcer: agencies and procedures for enforcement – the police, courts, and penal institutions.

But not all of these government fiats and enforcement agencies are necessary to preserve peace or enlarge freedom. In fact, the people of every nation could enlarge their freedom by repealing many laws on their statute books and by reducing the number of officials now trying to enforce these restraints.

Governments impose these restraints on liberty in order, supposedly, to check abuses of freedom. And, as the victims grow accustomed to their shackles, they are apt to shudder at the evils that they imagine might ensue if they and their fellows regained their freedom.[2]

In other words, it is hard for us to reconcile our desire for freedom with our knowledge that freedom is so often abused. Therefore, we give lip-service to freedom; we say that we really believe in free enterprise, that we honestly want more freedom for everyone. Yet most of us tolerate flagrant political infringements of freedom and then demand still more laws to deal with evils which these infringements produce.

We should know that freedom in any activity is always misused sooner or later by someone. No one has the complete knowledge necessary to do

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1 According to Webster's New World Dictionary (New York: The World Publishing Co., 1964), *nihilism* means: 1. *in philosophy*, a) the denial of the existence of any basis for knowledge or truth, b) the general rejection of customary beliefs in morality, religion, etc., also ethical nihilism. 2. in *politics*, a) the doctrine that all social, political, and economic institutions must be completely destroyed in order to make way for new institutions: specifically, b) N- a movement in Russia (c. 1860-1917) which advocated such revolutionary reform and attempted to carry it out through the use of some terrorism and assassination; hence, 3. loosely any violent revolutionary movement involving some use of terrorism.

2 Cf. Robert M. Bleiberg, "Government and Business: Federal Regulation Has Reached a Dead End," *Barron's*, April 23, 1975, for recent examples.

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always what is right, either in private or in relations with other persons. No one has the infinite wisdom or self-control necessary to avoid misusing the new opportunities which a progressive society is continually opening for its members. Doctors, nurses and teachers, as well as politicians, bankers, salesmen and artists, often abuse whatever freedom they have.

From this fact, the unthinking conclude that humans are unfit for freedom. They think of human progress, therefore, in terms of more and more use of government force to restrict freedom whenever or wherever anyone misuses it. Moreover, they often seek to abolish it where abuses are relatively few because it is politically easier to put restraints on the few than on the many.

Yet, it is from the actions of a few whom their fellows regard as foolish or dangerous, that we sometimes reap greatest benefit. "Freedom" to do only what someone else says is right is not freedom but slavery; and a society of free persons who know and choose to do only what is wise and good is a utopian dream.

What, then, is "The Law" which increases freedom as contrasted with the governmental edicts, which so often retard and restrict it? How do we discover "The Law" of a free society, and how do we enforce it without erecting a freedom-crushing State, or Government?

Law as a Regularity vs. Law as a Norm

In science and philosophy, a law is a uniform order, or sequence, of events. In human conduct, it is a pattern of behavior, regularly repeated, and therefore predictable. These regularities, or laws, of human action may be psychological, economic, moral, or juristic, and perhaps aesthetic and political.

The laws of human action, however, differ from the laws of inanimate nature as humans differ from inanimate matter. Humans differ from inanimate objects in that human actions are purposive, as are the actions of all living creatures. They act from internal motive forces necessary to maintain life, rather than in direct response to outside physical forces. This makes their conduct variable and less predictable because the internal structures and life forces vary from one individual to another. This individual variation is greater for the higher, more complex organisms; and it is greatest for humans of every race, age and condition.

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More significantly, humans differ from all other living creatures by being self-responsible. That is, they can learn to be consciously self-directing. Their actions result from choice rather than from instinct; and since humans choose to pursue an endless variety of self-determined purposes, any individual in a particular instance may depart from the behavior sequence which the praxeologist (scientist in the field of human action) sets forth as a "law," or regular mode of action.

The jurist, therefore, in common with other praxeologists, finds that the regularities, or laws, with which he deals are *norms* – normative rules, standards, expectations, probabilities, or "oughts" – rather than the (more nearly) invariable sequences which the physicist or the chemist may discover and call "laws."

Interpreted most broadly, therefore, "The Law" in human affairs means the norms or system of norms, for human behavior. A specialist in this field (a lawyer or jurist) may concern himself only with the rules and *standards* actually prevailing in the community to which his clients or other parties belong.

The Law in human relations, accordingly, consists of all of the rules, customs, and standards that affect the decisions of juries and judges. It includes not only written statutes and ordinances, rules of procedure in courts of law, and prior court decisions, but also pressures and prejudices which may influence a jury's vote or a judge's determination of the law in a particular case.

More narrowly, philosophers of law describe it as that entire complex body of rules, judicial decisions, and usages which *prescribe the actions* of individuals and groups toward one another and *which are enforced by sanctions.*

"Sanction," in this use of the term, means "detriment, loss of reward, or coercive intervention" to restrain, injure or inconvenience offenders. The sanctions for law may consist of counter-aggressive retaliatory force: seizure of property (fines), imprisonment, or physical injury (flogging, maiming, or execution).

Or, more often, these sanctions take the form of defensive actions, such as shunning the offender and using force merely to block attempted trespass or aggression. The defensive action may be co-operative, such as, for example, the exchange of information to alert one's neighbors or the members of an association to the offender's variation from the sanctioned norm.

Thus, a member of a credit association may report for the benefit of

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other members that a customer has failed to pay his bills. Or, the action may involve forming a voluntary association to block aggression by united action in erecting defenses, such as building walls and hiring watchmen.

Let us note at this point, moreover, that *the defensive responses to trespass are far more frequent and more effective than the coercive reactions.*

Origins of The Law

The Law – these sanctioned norms of human conduct – originate in the claims of individuals and in their actions to gain recognition and respect by other persons for these claims. As a dog whirls in a pile of hay or straw to make his sleeping place, so each individual makes for himself a place in nature and among his fellows as he acts to support his life and rear his offspring.

It does not follow, however, that these acts to support one's life must be predatory or that the actions to establish necessary claims (as for example, a claim to living space) must be aggressive and injurious to others. Humans make a better living by division of labor and voluntary exchange of services than by stealing or by producing merely for their own consumption.

For this reason, those who practice and defend the ways of peaceful, voluntary co-operation tend to "possess the earth." These peaceful usages become customs and mores, and finally acquire the sanctions that make them Law.

When Law and Freedom Are Underdeveloped

Members of primitive societies, of course, have only a primitive (scanty, undeveloped) understanding of The Law in the ideal sense. Therefore, their laws are primitive. This makes their culture primitive and restricts their level of living to one which makes their lives brutish and short.

That is, primitive societies recognize few claims of individuals to exclusive use (ownership) of land and its products: they recognize few claims to individual ownership of capital goods (such as a boat or even a hut); and they acknowledge few claims to control (ownership) of the

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individual's own energies and person. Still less do they acknowledge an individual's claims to private enjoyment (ownership) of what he may gain from trade with outsiders; and not until a society reaches a comparatively advanced stage of culture do its members permit individual claims to rent or interest earned by loans of property (that is, claims to gains from sale of the *uses* of property).

Members of such societies use their energies and resources inefficiently. They carry on little agriculture, devise few tools or machines, do little trading, do little building, and have no landlords, bankers or capitalists. That is what we mean by saying that their culture is "primitive." Their economy is "backward," or "underdeveloped"; and the people are "poor" (lacking in capital, or wealth). The individuals lack freedom (rights of ownership) to use their energies or the products of their labor and enterprise to enrich themselves. For lack of law establishing these rights, they are in bondage to the collective. This bondage restricts development of individual talents. Consequently, their social relations remain unprogressive, and their lives remain relatively mean and poor.

We should not infer from this, however, that the members of primitive societies live in a state of perpetual war with one another or with members of their communities. Popular though the notion may be, it is a myth that "savages" live in a "dog-eat-dog" state of incessant warfare and turmoil because they lack the officials and procedures of modern governments.

The contrary seems to be nearer the truth. The social relations within tribes of primitive cultures often appear more tranquil than those prevailing within and between those of more complex cultures.

The reason for this apparent tranquility may be that the tribe members punish violators with such certainty and severity that few dare to challenge the mores, as one might, for example, by trying to keep for his exclusive use what others believe should be shared. (Similarly, the relations between master and slave may appear peaceful because of the threat of dire penalties if the slave disobeys the master's orders; and relations within a trade union or between the unions and employers may appear peaceful because no employee or employer dares challenge its rule.)

The lack of recognition for individual property claims – in other words, the lack of property laws – means that, in a primitive group, any

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individual who keeps for himself the fruits of his labor may have sanctions applied to him much like those which an advanced community applies to a thief.

Yet, because ambition is stifled, members of a primitive society may appear to suffer less *feeling* of conflict with their fellows than members of more civilized and progressive societies; and they may share their meager fare generously with a passing stranger.

Claims — Strains — Progress

In more advanced and progressive societies, the growth of wealth and changes in ways of living produce ever more numerous changes in occupations and techniques. These changes continually give rise to new individual claims and conflicts, as, for example, claims to ownership of one's signature and conflicts with would-be trespassers (forgers). Out of these claims, pressed by the actions and arguments of interested individuals, come new usages, customs and laws – but not without stress and strain.

The stresses which arise from disputes over new claims may result in dangerous outbreaks of destructive violence unless there is a general, deep commitment to nonviolent methods of settling disputes. Insofar as this commitment to peaceable settlement of conflicting claims prevails, we find peace and progress.

This commitment to peaceful methods of settling disputes requires acceptance of the basic principles of The Law while discovering and learning to accept new applications of these principles.

Whence comes this commitment to nonviolence? Whence comes the rationale for non-interference and for individual rights that permits the development of property laws necessary for the growth of capital and for the human progress which increasing capital supports? In short, whence comes The Law which preserves the peace and frees the individual to prosper and progress?

The Way to Peace

On the one hand are those who profess to find that the fountain of law and justice is the tribal Chieftain, the King, the State, or the Government. In this view, the establishment of order, peace, and freedom must await the formation of a Government which claims and secures a monop-

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oly of the law-making process, and which aggressively applies whatever coercive, retaliatory sanctions may be necessary to frighten people into obedience to its decrees.

According to this view, too, peace between these governments will come only when a World Government acquires the overpowering military forces necessary to subject all competing Lawmakers and Enforcers to its authority.

Opposing this view are those philosophers of law who see in the monopolistic, retaliatory State a lawless organization which wins power by promising peace but which always sooner or later becomes the chief lawbreaker and war-monger. Worshipful reliance upon this political juggernaut, they warn, now threatens all mankind with enslavement and destruction.

The same unreason which approves retaliation and terroristic penalties for violations of the State's decrees gives rise to the collectivistic tyranny of the war-making State and finally produces the mob violence and civil war which mark its own decline and demise. Human progress, these juridical philosophers contend, requires an end to retaliation by States no less than by individuals, "Vengeance is mine: I will repay, saith the Lord."

In this anti-statist view, The Law is not devised but *discovered;* and this discovery can be made only by the exploratory actions and "right reason" of free, self-governing individuals. The truly progressive lawmakers then, are all of the countless individuals who practice, defend, and expound the norms of peaceful action in support of human life.

Thus, men of peace who recognized and tried to practice self-responsibility developed the *jus gentium* ("law of nations") of Ancient Rome. Similarly, their moral successors discovered, lived by and taught the medieval and modern "Law Merchant" of the Western World and the "Common Law" of the English-speaking nations.[3]

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[3] In the words of Cicero, "True law is right reason in agreement with nature; it is of universal application, immutable and eternal. . . . We are not allowed to alter this law, nor is it allowable to attempt to repeal any part of it, and it is impossible to abolish it entirely. We cannot be freed from its obligations by Senate or by people, and we need not look outside ourselves for an interpreter of it. There is not a different law for Rome and for Athens, or one for now and one for the future, but one eternal and unchangeable law valid for all nations and all times . . . Whoever is disobedient is fleeing from himself and denying his human nature." *De re publica*, III, 22, quoted by Louis Rougier, *The Genius of the West* (Nash Publishing Corporation, Los Angeles, California, 1971), p. 27.

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Outlawing Retaliation

The sanctions for The Law, as it has developed in the most advanced societies, no longer include retaliatory action by "unauthorized" (private) persons. A private citizen may kill a trespasser or thief with impunity only when he has reason to believe that the trespasser menaces his own life and that of others on the property. He may not, legally, pursue and kill the thief or trespasser who is running away. The wronged husband or wife may not vengefully kill an errant spouse. That so-called "Unwritten Law" in such cases is being repealed.

Consistent with this development in recent generations would be withdrawal of authority for retaliation by *any* person or persons. Ideally, the sanctions of a peaceful, law-abiding, progressive society *defend* and *preserve;* they do not retaliate or destroy. We find in advanced societies therefore, growing sentiment for rehabilitation of offenders or, at most, precautionary confinement, instead of penalties intended to "make an example" of them or to make them suffer as these trespassers made their victims suffer.

To see that terroristic penalties may not be the most effective way to gain obedience to The Law of a free society we must recognize two important facts:

> First, these penalties alone cannot secure compliance in an advanced society even now. To put this in another way, the police alone cannot stop crime in a modern, complex society.
>
> Second, we must recognize the many non-political ways by which members of a comparatively free and progressive society, such as these United States of America, teach and enforce The Law necessary for voluntary co-operation.

Individual and private action must play the leading role in making the laws and in obtaining compliance. Government officials may assist the process, but often they distort and misdirect it; and it is easy to overrate what Government can or should do in law-making and law-enforcement.

Furthermore, coercion — whether defensive or retaliatory — merely assists law enforcement in a limited number of cases. As Dr. Bruno Leoni, late Professor of Legal Theory at the University of Pavia, Italy, well said:

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> It is curious to note how many people are so highly impressed by the peculiar nature of coercion as a purportedly typical ingredient of legal norms that they tend to overlook completely the very *marginal* significance of coercion in any actual legal order as a whole.[4]

Moreover, he continued, coercive sanctions apply only to some norms, not to all.

> The main norms, such as the constitutional ones, in each single nation, or the international ones concerning relationships between nations, often do not even mention sanctions or coercions, for the simple reason that no sanction or coercion could assist them in any effective way. *(Ibid.)*

We should take care to note, however that Professor Leoni referred to coercive, retaliatory sanctions: for a practice that is subject to no sanctions whatever is not a law but merely a custom or usage.

Unfortunately, statist influences incline us to think of legal sanctions only in coercive, retaliatory terms (fines, imprisonment, and bodily injury), because in most cases the State must apply these or none at all.

Purely defensive sanctions, on the other hand, involve mechanisms and physical force only to block (prevent) aggression and withdraw from co-operation with the offender. These generally require the exercise of private initiative, which statism tends to discourage or suppress.

Yet, these noncoercive sanctions may be more effective and economical than retaliatory measures. This appears particularly obvious in the field of international relations. Few Americans today, probably, would favor efforts to collect a debt from a delinquent foreign government by a military expedition against it. Most would probably prefer purely defensive, noncoercive sanctions in such a case: withholding further loans until some agreement is made concerning the unpaid debts or until assurance is given that future contracts will be honored.

Many Americans would agree also that progress in obtaining compliance with The Law in domestic affairs might come more readily through greater reliance on nonretaliatory sanctions.

Juvenile delinquency, for example, has been increasing in recent decades mainly because Government has been discouraging or prohibiting use of certain defensive, noncoercive sanctions that were formerly applied. Teachers, parents, and employers once could and did withdraw their services and the opportunities of school, home, and workshop from mischievous or indolent youths.

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[4] *Lectures* before the Rampart College Phrontistery, December 1-7, 1963. See also his published work, *Freedom and The Law* (New York: D. Van Nostrand Company, Inc., 1961).

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Now, especially in the United States, school attendance laws deter public school teachers from expelling them. At the same time, child-support laws, child-labor laws, minimum-wage laws, and lawless actions of privileged trade unions discourage or prevent parents from requiring irresponsible juveniles to choose between accepting the disciplines of employment or leaving home. In addition, subsidies to the parents often weaken their incentive to impose the necessary sanctions.

Even more demoralizing, perhaps, has been the increase in statist control of the schools, control which deprives parents of both the means and the feeling of responsibility for educating their own offspring.

In short, Government has turned benevolent despot by subjecting youths to its own brand of maternalism and forced schooling, while it restricts their freedom to make themselves useful, reduces their parents' financial ability to provide more suitable schooling and in other cases reduces the parents' incentives to set an example of useful effort or to require such effort of their children.

Is it surprising, then, that juvenile victims of this irrational despotism turn, rebelliously, to mischief and crime to relieve their boredom or perhaps to supplement the unearned incomes of their subsidized families?

More freedom for the young to be useful, and more freedom for parents, employers and teachers to apply non-retaliatory sanctions, as well as to provide more productive outlets for youthful energies would be a more effective way to raise the moral level of juvenile conduct.

Progress in Private, Defensive Sanctions

Fortunately, private initiative still operates defensively in countless ways to maintain The Law: by home teaching and discipline, by locks on doors and windows, by watchdogs and burglar alarms, by private guards and watchmen, by safety deposit boxes and vaults, by cameras and recording devices, by lie detectors and reference requirements, by employment policies, by exchange of credit information, by organized or unorganized boycotts, and even by building walled cities for carefully selected residents.[5]

Criminality would quickly overwhelm the Government's defenses for

[5] As law-abiding citizens seek homes in "safe" communities — communities in which they are better protected against violence — they stimulate competition among politicians in performing this service for the citizens subject to their taxing authority. Unfortunately, increasing centralization of political power is restricting this wholesome competition.

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persons and property were it not for such private defensive actions. And, if private citizens become more aware of their responsibility and opportunities for self-defense, producers will quickly supply more effective devices and techniques for the purpose. This could do more to assure compliance with The Law than an increase in Government's police powers.

Libertarians contend that we can promote the progress of The Law by various reductions in the size and scope of Government. How far we should go in this dismantling process, and to what extent private enterprise can progress in providing improved protection, will be matters for endless speculation and debate.

But in one essential undertaking we can go far. We can co-operate in promoting understanding of the vital role of private, individual enterprise in making – discovering, accepting, and enforcing – The Law of a free society.

Along with this private law-making and law-enforcement, members of a free society must know and appreciate that coercion of one's fellow man – whether the coercion be legal or illegal – is not a short-cut to prosperity or welfare, but a barrier to progress for all mankind. Only by the example and freely given co-operation of our fellow humans can any of us prosper. Wrote Frédéric LePlay, French engineer and sociologist, "Prosperity is a multitude of good acts." A prosperous society, then, is one consisting of individuals who love the ways of justice, freedom, and righteousness.

Self-reverence, self-knowledge, self-control,
These three alone lead life to sovereign power.
Yet, not for power, (power of herself
Would come uncall'd for) but to live by law,
Acting the law we live by without fear;
And, because right is right, to follow right
Were wisdom in the scorn of consequences.

Aenone, Tennyson

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MORRIS C. SHUMIATCHER

THE INSECURITY OF SECURITY

AN IRONY OF OUR TIMES is the unwelcome discovery that our pursuit of economic security has led us down the road to insecurity. The greater our concern for safety, the more vulnerable we have become to the forces that are capable of destroying our freedom and dissolving our economic independence. Our preoccupation with the building of dykes against the flood has only raised the level of the waters beyond, and so augmented rather than allayed our apprehensions.

Before even the unconditional surrender of Britain's enemies in 1945, Lord Beveridge was advancing plans for a new kind of society in which, from the cradle to the grave, everyone's security would be underwritten by the state. Fear of the future would be forever banished.

Individual egalitarianism and economic security became the popular slogans of the day.

They were echoed in all parts of the post-war world. Socialist and welfare-oriented governments sprang up everywhere. Superficially, the slogans seemed as attractive as the promises of the new society in which not only war, but poverty itself would be abolished.

But after thirty years of euphoric eloquence, the welfare state realized none of the sanguine hopes or extravagant promises of its political progenitors. Economic security once seemed a simple matter to achieve by the rational planning of governmental experts and the central computerized controls

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of professional bureaucrats. The power to build a fortress against poverty and exploitation seemed unquestionably Parliament's. The good that would flow from banishing the common enemy of poverty and insecurity seemed self-evident. To achieve this felicitous result was a desire shared by almost everyone. Why could the vehicle of the law not be employed by governments to give effect to these inspired impulses?

The objective appeared so patently desirable and its realization so simple, why should the program for economic security that had so zealously been pursued after World War II prove to be as elusive as the military security that the French had sought to achieve with their Maginot line before the outbreak of hostilities in 1939? The answers are not dissimilar.

The French military planners between 1929 and 1939 viewed national security as a state of being in which the relationships between themselves and the forces and concepts of their likely enemy could remain fixed. They believed that behind the stone and steel of the Maginot's physical fortress, the life and liberty of France could somehow be preserved against assault. They ignored or discounted the simple fact that in war as in peace, the chief component of survival derives from a mystical, undefinable, ever-shifting historic force that emanates from the human spirit; that while the will to freedom may be a national treasure it is neither a museum piece nor a cloistered virtue. It exists only where it is beleaguered and challenged; it flourishes only when it is cherished and defended. A nation's will to live can no more thrive behind stone walls than an enemy's will to destroy it can be repulsed by those walls.

Like national security, a nation's economic base cannot draw its strength from roots buried in the sterile soil of economic laws that are merely accorded a legislative existence. Legal-economic juggling is no substitute for production or trade and while it may provide a series of diverting and entertaining performances, it is unlikely to bake more bread or build more houses or brighten any of the world's dark places. These achievements flow from the energies of individuals who, acting alone or in concert with others, apply their ingenuity and skills to improve their personal lives and in some significant way to assert a claim that each is different from the other; that while the state might treat everyone as a statistic in a plan, projected or realized, no citizen will consciously agree that his own plans and dreams, his work and achievements, can be reduced

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to the simplistic formulae of the apparatus of the state.

Our Love-Hate Affair with Inflation

There is scarcely a politician or economist today who does not proclaim that the most fearsome specter that now haunts the people of the industrialized countries is inflation – the sense that there is no longer any security to be found in the elaborate plans and promises of the architects of the great welfare society. The supply of paper money and credit has so outrun the supply of the things that money and credit are supposed to move from the producer to the market, and from the market to the consumer, that the price of all things today has ballooned and tomorrow the balloon may rise still higher. No one knows or can guess how much money it will take tomorrow to buy a meal, a shirt or a house. All of the elaborate welfare fences and hedges that were meant to provide economic security are sinking into insignificance as their value declines, and like the Maginot Line, they are skirted by the enemy and reduced to impotence.

What is equally disturbing is that it is not only the paper-thin welfare schemes that are vulnerable. The pension plans to which the most provident contributed upon the basis of sound actuarial data are shrinking even faster. In the result the whole chimerical scheme of social welfare has not only failed to reach the objectives it so idealistically set out to achieve, but it is jeopardizing the personal security that most people assumed that as reasonable men and women and as good citizens they were duty-bound to plan for their families and provide for themselves.

The reason for this failure is obvious. Welfarism has always been concerned only with the distribution of wealth. It has consistently ignored the necessity of generating new wealth and of regenerating the individuals who are capable of producing such wealth. It claims to be concerned with preserving the natural resources of the nation for the benefit of future generations, but it has consistently ignored the need to preserve the most important natural resource of all in this generation: the energy and enterprise of the people of the country who are productive, inventive, innovative and energetic. As the numbers of such persons decline, as assuredly they are declining in the face of heavy taxation and confiscatory laws, the wealth-generating capacity of the nation also declines.

The funds that ought to be saved and invested in new, productive machinery and equipment and in

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research and exploration and scientific development to increase our wealth and enhance our national well-being, are being used by governments to feed the voracious appetite for power of burgeoning bureaucracies whose principal function it is to control, to regulate, to inhibit and ultimately to strangle the innovative impulses and creative energies of the people. The growth of government payrolls is sought to be justified on the ground that full employment is a legitimate government objective and that if private organizations cannot provide it because they find it unprofitable to do so, the state will create jobs – real or unreal, productive or unproductive – to give at least the illusion that everyone (if not usefully employed) at least can draw the pay of a real job.

The pity is that no one is saying that if the job is a make-believe job, its wages can ultimately only be paid in stage money. And since productive people receive the same kind of paper bills and notes as the non-productive, the value of everyone's dollar declines. As the proportion of unproductive state-subsidized job-holders (as compared with the productive privately-employed people) increases, the value of all money decreases. And, as a result, of course, the standard of living of all persons except the non-productive, declines.

Money and credit paid to construct a mill that will produce new wealth and provide gainful employment enhances the value of the investment and produces for the nation a return on capital that ultimately benefits all citizens. But money paid to perpetuate idleness or to "create jobs" that are meaningless and simply subsidize the game of "make-believe" is an economically negative expenditure. In reducing the value of everyone's dollar it degrades the economically worthwhile pursuits of those whose honest toil produces a valuable asset or service. Not only does the useless job-creation process debase the currency; it disillusions and embitters the conscientious worker who grows cynical, or despairing, ultimately joins the non-productive job-holder. "After all," he reasons, "why should I work so hard when doing nothing gets you just as much?"

If it were only that the make-believe/make-job policy of government is non-productive, our economy might be capable of supporting the increased costs of those proliferating and prospering in the public purse. But the cost of such a policy is compounded many times by the irritating and irresistible penchant of public servants to meddle in the affairs of

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those citizens who must replenish that purse – citizens whom governments seek to control, direct, regulate, restrain and dominate not only in respect of their economic and social affairs, but in almost every facet of their fiscally fractured personal lives.

In the result, the country has become burdened by a new parasitic class of baronial busybodies who "toil not, neither do they spin: and yet even Solomon in all his glory was not arrayed like one of these."

The welfare state discounted the role played by the scale of rewards and penalties that is the natural discipline to which individuals living in a free society are subject. The rewards of productivity and inventiveness have traditionally been personal prosperity and plenty; the penalties of ineptitude and incompetence have usually been poverty and privation. In their zeal to apply the concept of egalitarianism to all, the welfarists determined to guarantee to the indolent, the ignorant and the nonproductive, the same rewards as are enjoyed by builders, innovators and producers of wealth. This could be accomplished only by taking from the productive the fruits of their industry through inordinately high taxation and, where considered expedient, through nationalization. The welfare state accords security not to the individual but to the state. Its beneficiaries are neither its citizens, its workers nor its tax payers; nor will they ever be. For we are sheep, and the progenitors of the welfare state have a lion's appetite for mutton.

Taxes Fuel Inflation

Taxation as an instrument of redistributing wealth and engineering a new social order has produced a revolution in the west as far-reaching in its consequences as the Russian revolution of 1917. It has resulted in the use of the vast tax revenues – greater by far than a treasurer's most extravagant dreams of avarice – to expand an already swollen army of civil servants and so create a new class of permanently socialized citizens dependent upon the state. Thus, there has come into being an infinite indolence of individuals occupying new workless jobs and engaging in gainless employment.

Governments at all levels are grabbing the glutton's slice of the citizen's income and property (about 45 per cent and fast increasing) not because of public need, but because of political greed. Governments have determined to meddle, to buy and sell and wheel and deal – and above all to control the economy – not to assist the productive citizen but

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to compete with him – and not to benefit the unproductive, but to so thoroughly convince him of his dependence upon the public largesse as to render him incapable of ever standing on his own feet. Governments no longer serve to ennoble the citizen; the citizen has become the servant and guinea pig of the state.

So long as politicians in pursuit of popularity pay lip service to a policy that pretends to be capable of providing all good things for all citizens regardless of the effort expended to produce them, the volume and value of production will continue to decline, the cost of what is produced will continue to rise, and the obvious effect will be that the rate of inflation will continue to accelerate.

Many years ago an observant economist stated what has become known as Gresham's Law. It is that "bad money drives good money out of the market place." That is why we no longer see or hear any silver coins tinkling in our pockets: nickel and tin have taken over.

Upon that same principle, I advance Shumiatcher's simple law that in a welfare state the idle drive the industrious out of the economy. The two corollaries that flow from that law, of course, are *first*: as more money is paid by the state for nothing, everything costs more; and *secondly*, the more people who get money for nothing, the fewer will do something for anything.

There is nothing more unsettling to a society (with the exception of war) than the ravages that inflation inflicts upon the stable middle class of a community. As prices rise, the goods that were once within the citizen's reach are, in effect, placed beyond his grasp as though they were no longer on the shopkeeper's shelves. The personal security that individuals spent a lifetime working to attain, suddenly disappears in a rising tide of prices that take his savings, dissolve his pension and leave him defenseless. Egalitarianism is indeed produced – but it is the egalitarianism not of affluence but of poverty.

Governments: Prime Profiteers

The startling fact is that it is only the government (at all levels) that profits from the national malaise of inflation. Its injection of more money into the economic stream than is generated by economically useful activities has poisoned the waters by which we all must live.

For this there are several reasons.

Apart from printing money, the government has only two sources from which to find the money it

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spends. It may secure it from the taxpayers who have no choice but to yield up and deliver what is demanded; or, it may get money from lenders who purchase government bonds at a rate of interest that governments fix. In fixing the rates of return on its borrowings, a government effectively determines what is likely to be the lowest rate of interest that money will yield in the national market place at any given time, on the theory that the government is the most trustworthy borrower in the country and other less reliable debtors will have to pay more.

The second reason that governments have a vested interest in inflation arises from their taxing policies. Inflation produces greater tax yields and so enables them to claim that continually expanding benefits will be paid out to those who are the objects of their welfare-oriented largesse. I am thinking now not so much of the retail sales tax bites – a five to eight per cent direct levy on all retail sales that increases with prices and sales volume. Such revenues do provide greater money returns to the state, but they are of no more benefit to a government than a retailer's enhanced prices that must go to defray the higher costs of replenishing his stock and paying his rising overhead.

I am thinking rather of the "progressive system" of taxation upon the income of individuals and companies that siphons off materially higher revenues from the citizen to the coffers of the state in a period of inflation than in a period of economic price stability. Again, the reason is obvious. The percentage of income that governments claim rises directly and steeply with the amount of the taxpayer's annual dollar income.

Receiving more dollars automatically moves you into a higher tax bracket: you receive more money in wages or profits because inflation has made each dollar worth less than before. You may have more money in your pocket but, like Alice in Wonderland, you now find you must run faster just to stay in the same place. Unfortunately, more dollars cannot keep Alice or even the Mad Hatter in the same place when the bite of "progressive taxation" takes so much greater a percentage of your income.

The principal inflators of the economy have been governments. They justify their policies by claiming that their duty is to guarantee full employment and "to create jobs" even though these jobs may be little more than slots to be filled with a payee to whom is delivered a monthly subsidy check. Ingenious programs are created for the purpose of assum-

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ing the responsibility to care for the careless, think for the thoughtless and animate the comatose.

The Injustice of the "Just Society"

The economic disorder of our times derives in large measure from the belief that distributing more of the dollars earned by those who work and save, to scatter them among those who are unwilling to do so can create a prosperous and just society. The result is likely to be precisely the opposite. The new society will be poor and not prosperous, because the penalties of working and saving have now grown so heavy that few are willing to work and none will have either the incentive or the ability to save. The new society is not a just society because justice demands that each man's work and accomplishments be recognized and valued for what they are in the market place where the public's demand will fix a value on their true worth. A just society cannot be created by acts of Parliament, but only by the actions of the people – positive, productive, profitable.

How is the true worth of any man's product valued in the free marketplace? His milk and meat and vegetables? The fence he mends, the house he builds, the roof he paints, the water pipe he repairs, the cyst he removes, the tooth he fills, the books of account he enters, the mail he carries, the suit he sews, the citizen he defends in court? How are these goods and services valued by the people who buy them or use them?

Mid-westerners who passed through the drought-ridden hungry 30's when money was as scarce as rain but individual ingenuity was as common as the grasshopper, remember that food and clothing and fuel that were wanted were often bartered for services that were needed. Chickens and eggs and butter went to the storekeeper who had shoes and shirts he could not sell, and the services of carpenters and plumbers and doctors and lawyers were bought with turkeys and ducks and cream and carrots and the odd calf. Government played little or no part in the trading or the production of these times. One very good reason why the presence of government officials was a rarity was because the people of the west were perfectly aware that there was no useful service bureaucrats could provide.

Even if they had existed at the time, what was the farmer or the town or city wage earner prepared to pay to an army of social workers or assessment commissioners or labor inspectors or occupational health officers or cooperative consulting coordinators or assistant

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deputy administrative directors or swine or beef or sheep or wool specialists or poultry administrators or agricultural machinery officers or farm development coordinators or communications directors or artificial insemination supervisors or consumer complaint investigators and research and liaison directors, or information services officers or deputy ministers of human resources development or human rights officers or directors of employment practices services units or commissioners of land banks or executive assistants to deputy ministers of northern areas or educational psychologist consultants or directors of hearing aid plans or welfare training coordinators or chiefs of special services for adults and chiefs of special services to youth and families of Welfare Departments, or nursing consultants and medical consultants and standards consultants and research and statistics directors or coordinators of special placements or coordinators of adoption services, or coordinators for the status of woman, or commissioners on aging—all for the welfare of the public; or property capital officers of tourism and renewable resources, or firearms safety supervisors, or interpretive services supervisors or museum services supervisors or parks directors or regional administrative directors or urban advising commissioners or workmen's advocates or ombudsmen?

How many people, in the days when cash was as scarce as pin feathers on a bullfrog, were willing to trade a cabbage or a cauliflower – let alone a chicken or a duck (even a lame one) – for the services that any such aggregation of high functionaries might be capable of performing for their benefit?

No Choice But to Pay

Of course, today, the public grudgingly pays for the services of all of these officials and a great many more besides, because taxes are compulsorily exacted and the citizen has no alternative but to pay. But if the vast army of bureaucrats and their minions were required to collect directly from those they purport to serve, money or money's worth, for what their services are considered to be worth, the national tax bite at all levels would decline from the present 40 to 45 per cent of the national gross product to one-quarter of that amount. The vast army of the public service across the country would be demobilized and its veterans would at last be free to engage in activities that might be productive and useful and that, in the eyes of their fellow citizens, would command a payment in

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money or money's worth for the goods they hopefully would come to produce or the services they might possibly learn to perform.

In a just society, each individual should be rewarded for his energy, his talents, his productivity and his service. He ought not to be rewarded because of his privileged position as an official of the state. Neither should he be penalized, as he so often is today, by the state because he puts in a better than average performance at what he knows or does best. Justice requires that each man be free to prove his excellence and to enjoy the rewards of his efforts as they are accorded him by those who pay for them and are therefore best able to judge their value.

It is well that we remember that who robs another of his reward, diminishes not only his own status, but deprives all of society of the benefits it might otherwise gain from the energies and productivity of every citizen.

The government that robs its citizens of their reward, upon whatever pretext, diminishes not only the stature of its citizens, but condemns the nation to a future of poverty and despair.

IDEAS ON LIBERTY

Injurious to Character

A SYSTEM for the support of inadequate persons in the United States was never contemplated by the authors of the Constitution; nor can any good reason be advanced why, as a permanent establishment, it should be founded for one class or color or our people more than another. Pending the war many refugees and freedmen received support from the Government, but it was never intended that they should thenceforth be fed, clothed, educated, and sheltered by the United States. The idea on which the slaves were assisted to freedom was that on becoming free they would be a self-sustaining population. Any legislation that shall imply that they are not expected to attain a self-sustaining condition must have a tendency injurious alike to their character and their prospects.

ANDREW JOHNSON, *Veto-Message of February 19, 1866*

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The Dissolution of Social Order

SYLVESTER PETRO

THE QUESTION of all questions in political economy not too long ago was: what should the functions of government be? Today it is: *will government be?*

Among the numerous, grave, and perhaps critical threats to the survival of civil order in the United States, one more ominous than the rest stands out: the movement in all the states and in the federal government to compel collective bargaining between our governments and unions acting as representatives of government employees. Although this movement rests upon a series of incredible distortions and misrepresentations of fact, it is propelled by premises, theories and arguments which cannot withstand serious examination, and creates chaos in every branch and sector of government where it takes hold, it is nevertheless gaining ground year by year, even day by day, in all our governments — federal, state, and local.

My thesis here is that this movement must be stopped if decent social order and effective representative government are to survive in this country. The nation, the states, the cities large and small, are already besieged by a horde of other destructive threats. Every-

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one knows this. Because understanding of these other threats is so widespread, however, there is at least room for hope that they will be dealt with more or less effectively. But profound ignorance at every level prevails on the issue of compulsory public-sector bargaining, and the powerful forces determined to inflict it upon the country therefore meet almost no resistance at all, let alone informed, determined, and effective resistance. My purpose is to stimulate such resistance, to inform it, and thus to contribute to its effectiveness. For if such resistance fails to appear, the virtually certain emergence of compulsory public-sector bargaining *universally* in this country — especially when this destructive institution combines with the other crises which are breaking the country apart — is bound to bring about chaos, anarchy, and, ultimately, tyranny.

Factual Distortions and Misrepresentations

The first thing we need readily at hand is hard and accurate information concerning the condition of public employment in this country, the status of our public servants, the way they are treated, the rights, powers, privileges, and immunities which they already possess. For among the most serious misrepresentations fueling the drive for compulsory public-sector bargaining are the contentions that our public servants are underpaid and mistreated, that they are denied the rights of "freedom of association" which prevail in the private sector, that they will never be satisfied till they have those same "rights," and that until they do there will be serious "unrest" in government employment, strikes, and all the other bad things which, the leaders of organized labor say, union representation magically causes to disappear.

The fact of the matter is that public servants in this country have always enjoyed the right of free association when that right is properly understood as meaning the privilege of joining any lawful private association. It is true that till recently in some states a person wishing to retain civil-service status might have to forego joining labor associations not composed exclusively of civil servants of the same governmental unit. However, this could in no proper view be regarded as an unconstitutional or even unfair disability. As Justice Holmes said, in upholding the authority of government to insist that its employees not play politics:

> . . . the petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman.

Be that as it may, civil servants

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have now for many years in most states had a right to join full-fledged trade unions without endangering their government employment. Indeed for the last six or seven years they have enjoyed such rights, under the U. S. Constitution, even in the few states which positively prohibited public employees from joining unions. This result was reached without the benefit of any statute, state or federal, protecting the jobs of civil servants who wished to join unions. That being the case, it is accurate to say that the associational rights of civil servants are greater than – not inferior to – those of private employees. For private employees acquired such rights only from labor statutes like the National Labor Relations Act. Prior to those labor relations statutes, private employers were privileged to refuse to employ persons who insisted upon joining unions.

Failure to Join

In view of these facts and developments, it seems fair to conclude that what bothers the unions is not that public servants are denied the rights of free association *but that too few have availed themselves of this "right."* The latest available figures indicate that of well over 11 million state and local civil servants only a little over one million have chosen to join unions, while another two million have preferred to join associations of other kinds, despite their universally prevailing right to join unions without fear of loss of employment.

One of the reasons, perhaps, for this failure of more civil servants to join unions is that in a substantial majority of the states right-to-work laws are in effect for civil servants, even when they are not in effect for private employees. In those states more employees have not joined, probably, simply because they have not been forced to join.

We are now in a position to understand why unions are so anxious to have the states and the federal government pass compulsory public-sector bargaining laws. Those laws, at least in the version pushed by the unions, usually provide for either permissive or mandatory "union shops"; that is, they contain provisions imposing union membership as a condition of employment. The insistence upon such laws demonstrates that unions are not really interested in extending the right of free association to public employment. That right is already there. What the unions want is to demolish the right; they want to be in a position to force union membership upon unwilling civil servants.

As yet only a minority of the states have passed full compulsory

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public-sector bargaining laws; and a still smaller minority (11 or 12) have passed laws under which union membership may be made a condition of public employment. This is the state of affairs which the public-sector unions find unsatisfactory. The contention that public servants are denied rights of free association is false – a smokescreen designed to conceal what is really going on.

Leaders Seek Power

To sum up: the union drive for compulsory public-sector bargaining laws has nothing to do with any desire to expand the rights of public servants. What it has to do with is the overweening lust for power which characterizes most union leaders, especially in the public sector. They want such laws because when they get them they will be in a position to arrogate to themselves, out of the fund of rights which now belongs to public servants, the power to compel all civil servants to accept them as exclusive bargaining representatives and then, on top of that, the additional power to make unwilling civil servants pay for the union services which they do not want.

Naturally, no public-sector union leader will admit to such impolitic objectives. He will move on, instead, to the second series of contentions which, he hopes, will convince legislators and an unwary public that compulsory public-sector bargaining laws are needed. Weeping copiously, he will lament the sad conditions in which public servants work, how terribly abused they are in terms of wages, hours, and other terms and conditions of employment. His contention will be that if only public servants have universally conferred upon them the blessings of collective bargaining all their complaints, all their troubles, will disappear.

Here again, what the public and the legislators need is a good strong dose of fact. The truth of the matter is that the wages of government employees have easily kept up with, when they have not materially surpassed, those of comparable private-sector employees. According to the U. S. Department of Commerce, while state and local government employment was rising by 151 per cent between 1951 and 1972, their monthly payrolls increased by 596 per cent.

The most detailed and authoritative private reporting service in the field, the *Government Employee Relations Report,* published by the Bureau of National Affairs, carries, almost each week news items indicating that government employees are by no means coming out on the short end. There is no need here to place undue emphasis

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upon such extraordinary phenomena as the $17,000 annual wage recently extracted from the taxpayers by San Francisco's street-sweepers. The average hourly wages of all civil servants for actual working hours are: in Ohio, $4.94; Minnesota, $5.13; Michigan, $6.67; Alaska, $9.53.

Federal Employees

As to employees of the federal government, a December 1974 article in *The Washington Monthly*, interestingly entitled "Government Unions: The New Bullies on the Block," tells an even more dramatic tale concerning the generosity with which public employees are treated. All government wage scales – federal, state, and local – are by law required to be comparable with those prevailing in the private sector. (Incidentally, they have to be if government is to attract employees.) Perhaps the most suggestive fact pointed out by *The Washington Monthly* article is that at least federal government employees are quite markedly outdistancing their colleagues in the private sector:

> . . . [F]ederal employees are among the highest-paid workers in the country. One third of all federal workers on GS scale are paid more than $15,000, and receive supplemental benefits equal to a third of their salaries. Officially, federal white-collar employees are supposed to be paid salaries 'comparable' to what they would earn in private industry. But in practice, many federal employees, especially those in the middle grades and those just below the highest paid 'supergrades,' are paid significantly more than they would get on the open market. For example, the appropriate salary for all GS-13s is determined by examining only five professions – attorneys, chief accountants, chemists, personnel directors, and engineers. Each of these positions (with the exception of personnel directors) demands greater training and technical skill than most government GS-13s possess. And the federal government has become so top-heavy that, for example, 52 per cent of the employees of the Department of Transportation are GS-12s or above. The starting salary for a GS-12 is $18,463.

The Question of Happiness

We hear a great deal about how gravely abused public employees are under the civil service merit system – and how much they would be benefited by replacing that system with union representation. Two comments should suffice here. In the first place, the civil service merit system, now in effect in all public employment, represents the most serious and most comprehensive attempt ever made *anywhere* to insure just treatment of employees on the job. In the second place, the assertion that union rep-

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resentation will insure better, fairer, more humane treatment for employees than the civil service merit system does is *only* assertion. All experience from the private sector seems to indicate that employees represented by unions are, to say the least, no happier or more contented than the vast majority of private-sector employees who have chosen to remain nonunion. By the latest count union members constitute considerably less than one-fourth of the private labor force. Moreover, it is reasonable to believe that a large number of that one-fourth belong to unions only because they must in order to keep their jobs. For something on the order of 80 per cent of all collective agreements contain provisions requiring union membership as a condition of employment.

The state of soul or mind called "alienation" may exist in government employment, but it is certainly not confined uniquely to nonunion civil servants. In all probability it is a permanent and ineradicable aspect of the human psyche. We live in a universe which we have not made and which we can remold nearer to our desires, apparently, to only a very small degree, if at all. The idea that the brutal, insensitive collectivism which animates unions will provide a cure for alienation is absurd and ridiculous. Alienation is a condition of the *individual* mind or soul; mass, collective action cannot cure it. By expanding the size and scope of the authority of large collectivities at the expense of individual autonomy, compulsory public-sector bargaining is more likely to increase alienation and individual discontent than to reduce it. One thing is certain: forcing civil servants to accept union representation when they do not wish to do so is not going to make them any happier.

Fallacious Premise: The "Private-Sector Analogy"

The factual misrepresentations, rank as they may be, are far less serious than the false premises and lame logic of the drive for compulsory public-sector bargaining laws. We must have such laws in government employment, we are told, because we have them in the private sector, because they have worked so well there to produce industrial peace and worker satisfaction (so they say), and because without them there will be great strife and unrest in government employment.

It is difficult to judge which is worse — the bold and brassy error in these contentions, or the profoundly significant omissions they tend to conceal.

Quite obviously it would not follow that we should have compul-

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sory collective bargaining in the public sector merely because we have it in the private sector – even if the claims made for it in the private sector were true. One would have to establish (at least) that there are no material differences between the public sector and the private sector: no mean task, since, as we shall see, the public and private sectors are basically and radically different in all the ways that matter most.

Before going into that, however, I believe it desirable to make some brief observations about our private sector labor policies. In the first place, as already noted, only a minor fraction of private-sector employment is subject to collective bargaining, despite the fact that for forty years now the federal government – and especially the National Labor Relations Board – has been doing its best to induce all private-sector employees to accept unionization. Year after year hundreds of thousands of private-sector employees have spurned the NLRB's inducements. Moreover they have spurned them in the most definitive manner possible: in secret-ballot elections conducted by the NLRB itself under rules heavily weighted in favor of the unions.

One would need to be out of touch with reality to contend seriously that there is more strife, more labor unrest, or more alienation in the vastly preponderant nonunionized part of private employment than there is in the unionized quarter. In those sectors of private employment where they have taken hold, our compulsory collective bargaining laws have not produced labor peace and harmony, much less consumer-serving productivity. On the contrary, the results have been disastrous in at least six ways.

(1) Our private-sector compulsory collective bargaining policy has condemned countless thousands of working persons who actively oppose union representation to a condition of serfdom by forcing them to accept and to pay for union representation which they do not want.

(2) It has severely hampered and rigidified and thus made much less profitable and efficient many of our basic industries, to the enduring harm of the communities served by those industries.

(3) In the opinion of many if not most of the outstanding economists of this country and of Europe, it has done great damage to the market economy in general and to the interests of workers and consumers in particular.

(4) The industries most subject to union control may be characterized by high nominal wages, but, as in construction and the rail-

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roads, they are likewise characterized by extensive and apparently permanent under-employment. A bricklayer's scale of $15 per hour is not all that great if as a result bricklayers are unable to find work.

(5) Our private sector labor policies have placed in the leaders of the big unions enormous political power, power which is normally directed in vicious, antisocial ways. Examples are minimum wage laws which make supernumeraries of our young people, especially young blacks; and the numerous types of interference with free trade which are pushed mainly by the big unions. In such instances – and in countless others which could be listed – the leaders of the big unions created by our compulsory collective bargaining policies have set themselves boldly and arrogantly against the best and most humane interests of the community as a whole.

(6) Finally, it is simply untrue to say that the introduction of compulsory collective bargaining statutes in the private sector brought labor peace where strife existed before. Take a look any year at the *Handbook of Labor Statistics*, prepared by the U. S. Bureau of Labor Statistics. Strikes more than doubled the year after the National Labor Relations Act became fully effective. This had to happen. As we shall presently see in more detail, unions are nothing at all if they are not highly professional strike agencies. Encourage unionization and you encourage strikes. It is as simple as that. To believe that this universal truth would not apply in the public sector would be to deny the validity of all relevant experience and assert that reason has become obsolete.

Remove the Coercion

If my all too abbreviated critique of our private-sector experience has any merit at all, it suggests that we should repeal the statutes compelling collective bargaining in the private sector rather than extend them to the public sector. However, even if we were to shut our eyes to that experience, even if we were inclined to agree that compulsory collective bargaining has "worked" in the private sector, it would remain true that universalizing compulsory collective bargaining in the public sector would be an extremely unwise and probably a fatally destructive move.

There is no proper analogy between the public sector and the private sector. Business is one thing. Government is, in every sense relevant to this discussion, entirely and categorically another. As Woodrow Wilson once said,

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The business of government is to see that no other organization is as strong as itself; to see that no group of men, no matter what their private business is, may come into competition with the authority of society.

In his Farewell Address, George Washington said that,

The very idea of the right and power of the people to establish government presupposes the duty of every individual to obey the established government.

John Austin, one of the greatest jurists of the last two centuries, understood the concept *sovereignty* as few before or after him have understood it. His position was that "the all-powerful portion of the community which makes laws should not be divisible, that it should not share its power with anybody else."

What these great men were saying is that if government is to serve the role in society which must be served if there is to be *society* – civil order – it must have sovereign, supreme and undiluted, power: power greater than that possessed by any other person, or group, or group of groups.

Where the Analogy Fails

This is the fact which utterly demolishes the private sector analogy. There is nothing basically destructive of private business in a law, however unwise that law may be, which forces employers to deal collectively with employee representatives on terms and conditions of employment. To repeat: it may be wrong to force dissident private employees to accept unions which they do not want and to compel private employers to bargain collectively with unions when they prefer to deal with their employees individually.

However, no social breakdown occurs as a consequence of compulsory private-sector bargaining. This is true in part because employers are compelled by the nature of things in a free society to bargain with their employees individually or collectively, anyway, if they wish to have employees; in part because few private employers, if any, are inclined to yield without resistance to extreme, anti-economic union demands; in part because private employers rarely if ever provide goods and services which cannot stand interruption for more or less sustained periods; and in part, finally and most importantly, because no private employer occupies a role so central and so indispensable to the survival of civilized society as all our governments – federal, state and local – do.

Monopoly is normally a bad thing in the private sector. In the public sector undivided, monopoly,

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sovereign power is absolutely indispensable to any civilized social order. Law is either universal, supreme, and exclusive – or it is nothing. Imagine two competing police forces, two competing armies, two competing judicial systems! The name for such a state of affairs is anarchy, not civilized order.

Because government is and has to be monopolistic in character, it also must perforce stand outside the market. Political considerations, not economic considerations, must direct its activities. The consensus of the whole community, not the private interests of individual producers and consumers, must determine the way in which government operates.

Political Decisions

Government cannot, as private business does, allocate its resources and expenditures on the basis of balance sheet considerations of profit and loss. All its decisions – as to how many police or fire stations or schools or garbage trucks should be bought or employees hired – all such decisions are political decisions. Ludwig von Mises has made the point:

> The objectives of public administration cannot be measured in money terms and cannot be checked by accountancy methods. Take a nationwide police system like the F.B.I. There is no yardstick available that could establish whether the expenses incurred by one of its regional or local branches were not excessive.
>
> In public administration there is no market price for achievements. This makes it indispensable to operate public offices according to principles entirely different from those applied under the profit motive.
>
> . . . [The government] must define in a precise way the quality and the quantity of the services to be rendered and the commodities to be sold, it must issue detailed instructions concerning the methods to be applied in the purchase of material factors of production *and in hiring and rewarding labor* . . . [Emphasis supplied.]
>
> . . . It would be utterly impracticable to delegate to any individual or group of individuals the power to draw freely on public funds. It is necessary to curb the power of managers of nationalized or municipalized systems . . . if they are not to be made irresponsible spenders of public money and if their management is not to disorganize the whole budget.

It should be obvious by now that – and why – government cannot share with unions its power over the public service and at the same time retain its character as government, responsible to the community consensus alone. Even if decisions concerning the course of government and of government employment could be made jointly by duly elected or appointed offi-

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cials and union negotiators, there would be a dissolution of sovereignty and a dissipation if not destruction of popular government. But the unfortunate fact is that under compulsory public-sector bargaining there will not be merely a sharing of sovereignty; common sense and experience indicate that the sovereignty is bound to come to rest, ultimately, in the public sector unions.

Strife Is Assured

I repeat: this is bound to happen. Proponents of compulsory public-sector bargaining contend that it is the only way to eliminate strife and unrest in public employment, but the fact of the matter is that such bargaining is a means of *insuring* strife and unrest, in the government service. From such strife and unrest the public-sector union leaders are bound to emerge in this country – as they already have in England and in Italy – as our ultimate rulers. For, as Henry C. Simons called them, unions are "battle agencies." They have to be. In order to get and keep members, they must continuously seek and bend every effort to get more than the employers of their members are willing to pay. By now, even the dullest observers of this field are aware that politicians and political officials tend to be far more generous with taxpayer money than private businessmen are with stockholders' money. Nevertheless, there comes a point, even in government, when the never-ending demands that unions are compelled to make must be met with a straightforward "No."

What happens then? Well, the history of the last decade is instructive. In order to keep their members, the unions must refuse to take "no" for an answer. Over the last decade the number of public-employee strikes has increased by well over 1100 per cent. This is what refusing to take "no" for an answer means among the public-sector unions: Striking. And the fact that until just the last year or so (and then in just a few states) public-employee strikes were (and are even now in most states) unlawful – this fact has neither discouraged the union leaders from calling strikes, nor made their members hesitate to participate in them.

If these facts prove anything, they prove that – not the law, not duty to the public, not respect for judicial orders – but union leaders have become for unionized public servants their sovereign liege lords. When I say that widespread adoption of compulsory public-sector bargaining laws will inevitably result in the destruction of popular sovereignty and in its replace-

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ment with the virtual anarchy of a sovereignty split among the leaders of the more critically placed public-sector unions, these are the facts and the common sense analyses upon which I rest the prediction.

It is strictly speaking absurd to suggest that compulsory public-sector bargaining laws are needed in order to eliminate strife and unrest in public employment. Before such laws were passed in the late fifties and the sixties, there were no strikes to speak of and no other significant forms of mass unrest in public employment. Before public agencies, especially in such places as New York City, began bargaining collectively with unions representing their employees —i.e., began recognizing unions as exclusive bargaining representatives and thus abdicating to unions the sovereign powers of government — there were no public-sector strikes, none to speak of anyway.

The strife and the unrest have come since unions have been recognized in some states and cities as exclusive bargaining representatives. Significantly, the strife and unrest have been localized in precisely those jurisdictions. It is largely absent in the localities which refuse to recognize unions as exclusive bargaining representatives of public employees. And one may confidently conclude that it would be entirely absent if militant trade unions were excluded from public sector employment — as a proper respect for the duties and powers of government would require.

Such a state of affairs — leading to peace and harmony rather than chaos and war between government and their employees — would not require that the right of free association be denied to public employees. Public employees might very well join or even be encouraged to join associations confined to civil servants. Indeed, as we have seen, ever since the first civil service laws were passed in this country (and they are now universal), public servants have been free to form and join their own civil service organizations.

A Dubious Progression: Chaos to Anarchy to Tyranny

In a drastic reversal of former opinion, state courts all over the country have been upholding the constitutionality of recently passed compulsory public-sector bargaining laws. Less than thirty years ago, the consensus among judges was precisely to the contrary. All across the land they had been holding that for a public agency to bargain collectively on the terms and conditions of public employment would involve an unconstitutional abdication and delegation of gov-

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ernmental power and thus a betrayal of representative government.

Nowadays, however, we read repeatedly in judicial opinions that there is nothing wrong in such laws. Some of the state courts have gone so far as to uphold laws providing for compulsory arbitration of public sector labor disputes. Going even further, some have held that public servants have a right to strike.

Despite these abrupt changes of opinion, however, a curious movement is afoot among the judges. Several of the courts which have gone furthest in welcoming the abdication of sovereign power implicit in compulsory public sector bargaining laws, have begun quietly and unobtrusively to see to it that *their* sovereign powers remain unimpaired! Some have been holding that court employees are excluded from the compulsory bargaining laws. Others have been holding that insofar as court employees are concerned, the proper party to do the bargaining with them is not a state or local administrative officer, but the presiding judge.

When the state or local administrative officers object to these decisions, contending, among other things, that they are scarcely likely to get fair hearings on the matter from judges who are themselves interested parties, the courts are brought face to face with the destructive and contradictory character of all compulsory public-sector bargaining laws. They are forced to see willy-nilly that such laws simply cannot be reconciled with any intelligible concept of sovereignty.

In one case the complaining county commissioner charged that the county was being denied due process of law and equal protection of the law because his opponent in the case was a member of the very judiciary which was deciding whether he, the county commissioner, or his opponent, the county judge, was the appropriate bargaining agent! The court could only reply, lamely, that it would do its best to insure a fair hearing.

Approaching a Critical Problem: Judicial Absolutism

Judicial absolutism has long been a problem in this country. Cases such as the ones we have just reviewed indicate that the problem is approaching a critical state. At the moment, the result of the compulsory public-sector bargaining laws prevailing in some of the states is that the ultimate power of government lies in the courts, the least representative branch of government. A number of considerations suggest, however, that this condition is strictly tempo-

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rary: that before long the ultimate sovereignty will fall to the public-sector union leaders who, besides being representatives of only their own interests, not of the electorate, are not in the slightest degree a legitimate branch of government.

The authors of the *Federalist* knew what they were talking about when they referred to the judiciary as the weakest branch of the government. The judgments and decisions of the judiciary are meaningful only to the extent that the general public respects them and the executive branch of the government enforces them. What can judges do about public-sector strikes? If we are to take experience as our guide, the answer has to be: *nothing*.

To repeat, thousands of public-sector strikes have been called over the last decade – all illegally. However, the illegality made no difference: the unions called the strikes anyway, and, over the years, millions of police officers, firefighters, school-teachers, garbage collectors, highway-maintenance men (during blizzards, yet!) went out, apparently stirred only by contempt of the possible court actions against them. Indeed, when a New York court enjoined a garbagemen's strike, their union leader, John DeLury, instead of obeying the injunction, in the words of New York's highest court, "went to the other extreme, actually urged the men to make the strike 'effective 100%.'"

All competent scholars in the labor law field are aware that anti-strike injunctions are almost impossible to enforce, even in the private sector, where, at least, the forces of government are available to attempt to induce respect for the court orders. But what prospect is there for enforcement of a court order against a public-sector union when all civil servants are unionized, as they will be if compulsory collective bargaining laws prevail universally in this country? Who is going to enforce an injunction against a strike by a policeman? the National Guard? the Army?

The situation is even grimmer than the foregoing analysis suggests. In fact, public-sector strikes do such enormous harm in such a brief time that court actions aimed at enjoining them are usually an exercise in futility. Even before the legal papers are filed, the greater part of the damage done by a good many public-sector strikes is already done. The strikers have the community over a barrel. It has to give in. According to one study of events in the experimental laboratory of our subject, the City of New York, the vast preponderance of the public-sector strikes called there never reach the courts at all.

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The harm they do is so vicious that the striking unions are in a position to extort, as part of the price for going back to work, an agreement from the city authorities not to prosecute the strike, despite its illegality!

The only conclusion possible from the foregoing discussion is that compulsory public-sector bargaining is incompatible with both representative government and the kind of sovereign governmental power needed if we are to live in a free, peaceful, and decently ordered society. Under a universal regime of compulsory public-sector bargaining, the sovereign powers will belong to neither the people nor their duly elected and appointed representatives. They will be fragmented and dispersed among the most power-hungry leaders of the public-sector unions. Those persons, not our elected representatives, will be our rulers.

Not all of us will be willing to accept them as rulers; indeed, no one in his right mind would accept any of the present leaders of the public-sector unions as his sovereign authority. This being true, the result will have to be, in order: chaos, the situation prevailing when sovereignty is divided among the public-sector union leaders; anarchy, the condition resulting from the refusal by all sensible persons to accept the feudal lordship of the public-sector union leaders; and finally, tyranny, the state of affairs which generally succeeds anarchy because of mankind's insuppressible and ineradicable need of order if life is to proceed at all satisfactorily.

IDEAS ON LIBERTY

The Rule of Law

THE END of the law is, not to abolish or restrain, but to preserve and enlarge freedom. For in all the states of created beings capable of laws, where there is no law there is no freedom. For liberty is to be free from restraint and violence from others; which cannot be where there is no law; and is not, as we are told, a liberty for every man to do what he lists. (For who could be free when every other man's humour might domineer over him?) But a liberty to dispose, and order as he lists, his person, actions, possessions, and his whole property, within the allowance of those laws under which he is, and therein not to be the subject of the arbitrary will of another, but freely follow his own.

JOHN LOCKE, *Second Treatise*

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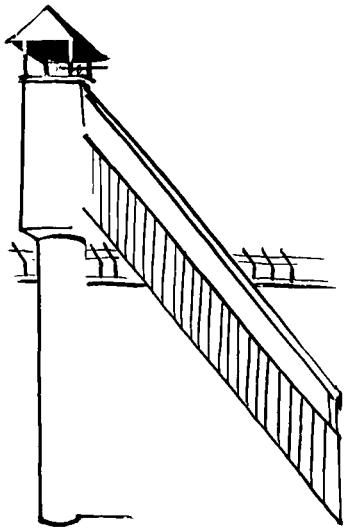

The Evils of Nazism

I MUST BEGIN with a confession. I put off reading Gitta Sereny's *Into That Darkness: From Mercy Killing to Mass Murder* (McGraw-Hill, $9.95) for weeks because, having once spent a morning in the Museum of the Holocaust outside Jerusalem, where the horrors of the Hitler gas chambers are made unbearably explicit, I didn't think I could stand repeating a shattering experience. It was chicken-hearted of me to behave in such a way. Once I had conquered my queasiness and decided to take the plunge all over again, I must say that I was relieved to find myself reading a document that is as far above being a routine listing of horrors as Dostoevsky's *Crime and Punishment* is above a mere detective story.

There are fashions in contemplating the evils of Nazism. At the time of Nuremberg it was enough to say that Hitler, Goebbels and Company were moral monsters who deserved what they got, which was assuredly true even though the

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"victors' justice" court which tried the top-ranking Nazis was in itself a dubious legal instrument. But the larger question of acquiescence in guilt was not settled at Nuremberg. There were Germans who knew all about the gas chambers and other crimes of the Nazi State who "went along." In the Burkean phrase, they were the "good men" who did nothing. And there were those who, though they didn't take part in the actual killings, carried out the administrative jobs connected with the maintenance of the grisly death camps.

Hannah Arendt has spoken of the "banality of evil." In the Hitler State "little" men, taking orders, made their little decisions. Taken separately, these seemed ordinary concessions to prudence. By the time the cumulative effect of step-by-step choices became apparent it was too late to extricate one's self from the web that had been woven. Suicide or the assassination of one's evil superiors was always possible, but the vulnerability of one's family and friends was usually enough to repress any belated decision to become a martyr.

A Tool of the Totalitarian State

Gitta Sereny picked a not-so-little man, but a cog-type individual nonetheless, for her study of how a person who bore no ill will toward other human beings could be trapped into becoming an administrative tool in the hands of a State that had decided to make mass murder an instrument of policy. She spent seventy hours in 1971 talking with Franz Stangl, who had been the Kommandant of Treblinka extermination camp in Poland where more than a million Jews died. Stangl, who had escaped from Austria via the so-called "Vatican Route" to Rome after the Allies had overrun the Nazi lines, had been extradited from Brazil to stand trial at Düsseldorf, and he seemed to want to talk with a stranger about the meaning of his life. His story, and that of his wife and family, is anything but banal, for it raises fundamental questions which all of us, in this day of burgeoning State power, must answer even though our immediate circumstances may not yet involve decisions that are life-or-death matters.

Franz Stangl died of heart failure the day after Gitta Sereny had completed her interviewing. He had finally admitted to a sort of guilt for not taking a stand against what went on in the extermination camps. "My guilt," he said, "is that I am still here."

But in the context of a life that could not have perfect foresight, was a stand ever possible for a man of Stangl's nature? He did not want to do evil and he would never

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have willed it. He had a normal animal commitment to remaining alive, and he could never have brought himself to hurt his wife and daughters.

Remaining Alive

As a young police officer in Austria, he had good reason to think he was on a Nazi list for extermination after the Anschluss. After all, he had received a citation for bringing a secret Austrian Nazi to justice for poaching. He got out of that by spreading the story that he himself had been a secret Nazi. Speaking more than thirty years later, Stangl told Gitta Sereny that he should have killed himself in 1938. "I hate the Germans," he burst out in 1971, "for what they pulled me into." But this was hindsight; no one with an instinct for survival would have taken a different course than the one chosen by Stangl at the time.

The problem of remaining alive involved escaping to Germany from Austria, where a Party functionary named Prohaska had it in for him. So, from the frying pan Stangl jumped into the fire, taking a job at Schloss Hartheim connected with the Nazi Euthanasia Program. Stangl had nothing to do with choosing the crippled or mentally retarded people that Nazi State doctors had selected for "mercy-killings." And he could not have known that the Euthanasia Program was a trial run for gassing six million Jews, along with other "undesirables" and "enemies of the State."

When he was asked to be Kommandant in Poland of extermination camps, he tried to wriggle out of it. But nobody was willing to pick him for a job in the Crimea. He consoled himself at Sobibor and Treblinka by telling himself that he had nothing to do with shoving people into the extinction corridor and by saying that if he were to quit his administrative job it would not save a single Jew. If he had made a strong stand, the Nazis would not only have liquidated him, they would have seized his wife and children and shipped them to concentration camps where, most probably, they would have died.

Gitta Sereny does not condemn Stangl explicitly; she lets him condemn himself. He knew he had acquiesced in evil. But he was caught. Like everyone else with family and friends in Germany he was a man who had given hostages to the superstate.

Lessons for All of Us

The story is horrifying in its implications for all of us. As we give more and more power to our governments in the West to override what used to be called the inalienable rights (to life, liberty and property), how do we know that we

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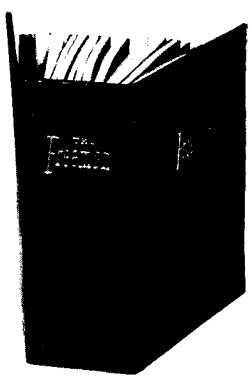
aren't doing precisely what Stangl did when he first tried to placate the Nazis in 1938 in Austria? One little thing leads to another. The monster State does not show its hideous face all at once. In Germany the Nazis were legally elected by a people who thought they were helping to solve an economic crisis and to get back at Versailles.

Meanwhile, as Gitta Sereny offers us her heart-rending document about mass killings in Hitler's Germany, the Communists are busy liquidating thousands in Cambodia and Vietnam. They do it for "class" reasons, not "race." But is it any more consoling to be beheaded as a bourgeois than as a Jew?

The total State is the same everywhere. So beware of those "little" decisions. They make you a Stangl tomorrow.



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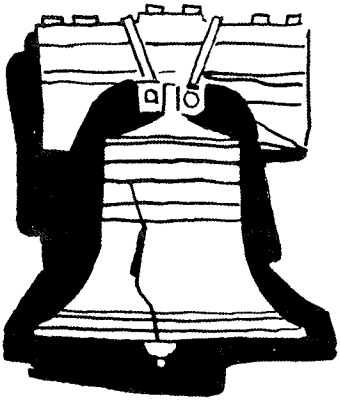

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